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REDACTED MEMORANDUM RE: DOCUMENTS SELECTED FOR *IN CAMERA* INSPECTION

Pursuant to the Magistrate's Order dated August 12, 2014 and Judge
Birotte's Order dated October 9, 2014, plaintiffs and counterclaim defendants
Fourth Age Limited, Priscilla Mary Anne Reuel Tolkien, as Trustee of The Tolkien
Trust, The J.R.R. Tolkien Estate Ltd., HarperCollins Publishers, Ltd., Unwin
Hyman Ltd. and George Allen & Unwin (Publishers), Ltd. (collectively, the
"Tolkien/HC Parties") were ordered to lodge 150 of their privileged documents
selected by Warner and Zaentz (collectively, "Defendants") for in camera review:
100 documents with respect to Issue Nos. 3 and 5, and 50 documents with respect
to Issue No. 4.

To assist the Court in this review, on October 20, 2014, the Tolkien/HC Parties submitted concurrently with the their 150 privileged documents, a brief confidential description of each of the selected documents and a confidential explanation of the basis for each of the Tolkien/HC Parties' privilege assertions (the "Initial Confidential Memorandum"). Because the Initial Confidential Memorandum revealed the contents of communications protected by the attorney-client privilege and/or the attorney work product doctrine, it was lodged with the Magistrate on a confidential basis, and was not filed or served.

On October 28, 2014, the Court issued a further Order requesting that the Tolkien/HC Parties "consider sanitizing the [Initial Confidential Memorandum] as they see fit, and then fil[e] and serv[e] it on all parties in advance of the hearing date" concerning the Court's review of the Tolkien/HC Parties' 150 documents. Dkt. 333. Pursuant to the Court's October 28th Order, the Tolkien/HC Parties hereby submit the below redacted version of the Initial Confidential Memorandum, without waiver of any applicable privileges.

I. <u>ISSUE NOS. 3 & 5</u>

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Document No. 9¹: This lawsuit arises out of a dispute over the scope 1. of merchandising rights in and to Professor J.R.R. Tolkien's seminal literary works The Lord of the Rings and The Hobbit (the "Tolkien Works"). In 1969, the predecessors in interest to the Tolkien/HC Parties granted to certain of Defendants' predecessors in interest limited rights to use the Tolkien Works in connection with "articles of tangible personal property." In the same 1969 agreement, the predecessors in interest to the Tolkien/HC Parties explicitly reserved to themselves "all rights and/or interests not herein specifically granted." In this lawsuit, the Tolkien/HC Parties contend that defendants exceeded the scope of the limited merchandise rights by, among other things, licensing and selling (1) gambling games based on the Tolkien Works, (2) "intangible" video games based on the Tolkien Works – i.e., video games that are delivered otherwise than by way of physical media such as DVD or cartridge, including (but not limited to) games delivered by way of electronic download, mobile telephone networks or social media websites (the "Intangible Video Games"), and (3) the right to use trademarks based on the Tolkien Works in connection with services, such as restaurants, hotels and theme parks.

Cathleen Blackburn is currently an attorney with the law firm of Maier Blackburn; she was previously a partner at the law firms of Manches LLP and Morrell, Peel & Gamlen. Ms. Blackburn is the primary outside counsel for the Tolkien Parties. She has regularly represented the Tolkien Parties throughout her tenure at each of these firms, and continues to do so today. In that capacity, Ms. Blackburn regularly provides legal advice to the Tolkien Parties regarding the scope of each parties' respect rights under the 1969 agreements, including without limitation, which rights have been licensed to Zaentz pursuant to the 1969

¹ The document numbers correspond to the numbers identified in Warner and Zaentz's Joint Submission re July 22 Order, Dkt. No 285.

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agreements and which rights have been retained by the Tolkien Parties.
Throughout the course of the parties' relationship, issues have regularly arisen with
respect to third party requests to license the Tolkien Works or elements therefrom,
and whether the requested rights are controlled by the Tolkien/HC Parties or
Zaentz. With respect to outside counsel such as Ms. Blackburn and her partner
Steven Maier, the law <u>presumes</u> that communications between a client and its
outside counsel are made for the purpose of seeking legal advice. U.S. v.
Chevrontexaco Corp., 241 F.Supp.2d 1065, 1076 (N.D. Cal. 2002).

Document No. 9 is an email chain dated June 7, 2010 between Baillie Tolkien and Adam Tolkien, representatives of the Tolkien Parties, in which they discuss an inquiry by a third party to use a fictional name which appears in the Tolkien Works in connection with a tree service company. In their email exchange, the Tolkiens discuss Ms. Blackburn's legal analysis as to

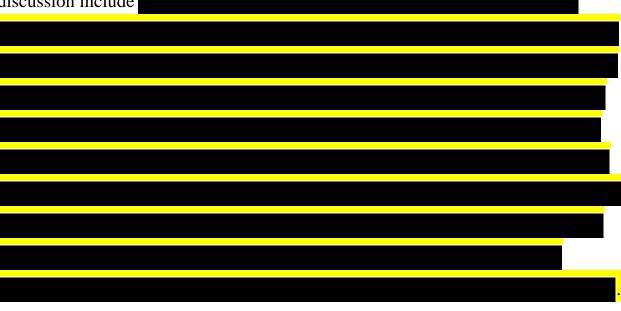
. Ms. Tolkien also details further legal advice which she would like to obtain on the subject, and asks Adam Tolkien to discuss these legal issues with Ms. Blackburn to obtain her advice.

As the document plainly reveals, Ms. Tolkien's only purpose in sending the email was to discuss legal advice given by counsel for the Tolkien Parties confidentially with another representative of the Tolkien Parties², and to detail further legal advice needed from counsel. The document is protected by the attorney-client privilege. As a result, the Court need not reach the issue of whether the attorney work product doctrine applies; however, because the document reveals Ms. Blackburn's mental impressions and conclusions, and legal opinion and

² The "D" referred to in the email chain is Adam Tolkien's father, Christopher Tolkien, another Tolkien family representative.

strategy in dealing both with	
	it is shielded from disclosure as attorney work
product as well.	

2. <u>Document No. 10</u>: This document is a January 27, 2006 email from Adam Tolkien, representative of the Tolkien Parties, to Cathleen Blackburn, counsel for the Tolkien Parties, and Baillie Tolkien, representative of the Tolkien Parties. It is an agenda outlining various legal issues to be discussed in an upcoming meeting between representatives of the Tolkien Estate and their counsel; it was prepared as a precursor for future privileged discussions and for the purpose of seeking legal advice on those issues. The legal issues identified in the email for discussion include



The email is thus a communication between the Tolkiens and their counsel, created for the purpose of seeking legal advice in advance of a meeting with counsel and identifying the legal issues to be discussed with counsel. On its face, the document is protected by the attorney-client privilege. Discussions regarding are also protected by the

are also protected by the

attorney work product doctrine.

3. Document No. 16: This documents consists of a January 27, 2006 email from Adam Tolkien to Baillie Tolkien, which forwards a January 26, 2006

As is discussed in more detail below, the Tolkien Parties and the HarperCollins Parties are joint owners of the copyrights and trademarks in the Tolkien Works. Vis-à-vis third parties

Ms. Blackburn regularly provides legal advice to the

Ms. Blackburn regularly provides legal advice to the HarperCollins Parties (and works closely with HarperCollins' legal counsel) regarding the scope of those jointly-held rights, potential infringements and other matters of common legal and commercial interests. As joint rights holders, the Estate and HarperCollins work together to formulate positions and policies regarding third party requests or potential infringement of the Tolkien Works. The Permissions Guidelines contain Ms. Blackburn's legal analysis of and constitute common legal advice given by Ms. Blackburn to

the Tolkien Parties and the HC Parties to ensure that both parties handled third

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and attorney work product doctrine.

party permissions requests as to their jointly-held rights in a consister	nt and
contractually-appropriate manner.	

In sum, Document No. 16 is a communication between Tolkien

representatives forwarding a privileged email communication between Mr. Tolkien and the Tolkien Parties' legal counsel about which contains legal advice and the mental impressions and conclusions, legal strategy and contractual rights analysis with respect to the handling of permissions requests, it is protected from disclosure by the attorney-client privilege

Document No. 17: This document consists of a January 12-13, 2006 email exchange between Baillie Tolkien and Adam Tolkien, which forwards and discusses a January 12, 2006 email from Cathleen Blackburn to Mr. Tolkien regarding two third party permissions requests to license the Tolkien Works. Ms. Blackburn specifically identifies these third party requests as

Thus, the last email in the chain (p. 2 of the document) is a confidential communication between the Tolkien Parties and their counsel discussing Ms. Blackburn's legal analysis and advice regarding it is plainly privileged. The cover email exchange (p. 1 of the document) discusses Ms. Blackburn's early email and the legal analysis and advice contained therein. It also reflects the

Tolkien representatives' intention to discuss these legal issues with Ms. Blackburn

at an upcoming meeting. For this reason, the cover email exchange is also

5. **Document No. 18:** This document is an email chain dated June 7, 2010 between Baillie Tolkien and Adam Tolkien, representatives of the Tolkien Parties, in which they discuss an inquiry by a third party to license a fictional name

protected from disclosure.

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which appears in the Tolkien Works in connection with a tree service company. It
repeats the email chain identified Document No. 9 (see Issue No. 1, above), but
contains an additional email between the Tolkien representatives which further
discusses and elaborates on Ms. Blackburn's legal analysis as to
. For each of the reasons set forth in Issue No. 1, above, this
document reveals the legal advice, analysis of legal issues, and mental impressions
and conclusions of Ms. Blackburn regarding
and is therefore
protected by the attorney-client privilege and attorney work product doctrine.

Document No. 49: This document is a letter dated October 4, 1983, from Rayner Unwin, then-chairman of George, Allen & Unwin (predecessor-ininterest to the HC Parties), to Frank Richard Williamson (known as Dick Williamson), then-counsel for the Tolkien Parties. Mr. Williamson was formerly the primary outside counsel for the Tolkien Parties. (Later, Ms. Blackburn took over Mr. Williamson's responsibilities as primary outside counsel for the Tolkien Parties when Mr. Williamson retired). Mr. Williamson was a partner at the law firm of Morrell, Peel & Gamlen.

Because the Tolkien Parties and the HC Parties jointly owned rights in and to the Tolkien Works, the HC Parties frequently asked for and received legal advice from outside counsel for the Tolkien Parties – Mr. Williamson, Ms. Blackburn, Steven Maier, and others – regarding the licensing and administration of their jointly held rights in and to the Tolkien Works. The Tolkien/HC Parties' counsel regularly advised the HC Parties with respect to matters which affected their shared legal and commercial interests as joint rights holders, including, in particular, their joint rights and interests vis-à-vis Defendants and their predecessors-in-interest, and other third party licensees. Moreover, outside counsel for the Tolkien Parties and

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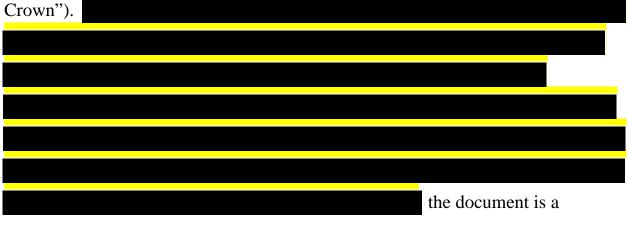
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in- house counsel for the HC Parties regularly shared legal strategies, mental
impressions and legal conclusions, in furtherance of their collective efforts to
protect and assert the Tolkien/HC Parties' jointly held rights vis-à-vis third parties
including Zaentz and Warner. In short, the legal and commercial interests of the
Tolkien Estate and HarperCollins were and are aligned, when these parties dealt
with third parties on matters affecting rights in and to the Tolkien Works, and the
Estate and HarperCollins worked together (and continue to work together) to
further these common legal and commercial interest as against third parties.

Indeed, as Defendants themselves have argued in attempting to shield their exchanges with each other from scrutiny, under such circumstances, the common interest privilege applies; those interests "need not be identical at all times [and] are not limited to instances where litigation is already pending." Dkt. No. 309, at 7:24-25.

In Document No. 49, Mr. Unwin seeks Mr. Williamson's legal advice with respect to a certain license with respect to the Tolkien Works entered into between Fantasy Films (a Zaentz entity) and third party Iron Crown Enterprises ("Iron



confidential communication between holders of a common interest privilege, seeking legal advice with respect to a matter of common interest. It is therefore protected by the attorney-client privilege.

7. **Document No. 59:** This document is an agenda for a Tolkien Committee Meeting to be held on September 28, 1994. As evidenced by the fax

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transmittal on the top of the document, it was sent from the law firm of Morrell,
Peel & Gamlen (at which Mr. Williamson and Ms. Blackburn worked) to
Christopher Tolkien. The Tolkien Parties were able to confirm that the document
was prepared by Cathleen Blackburn, counsel for the Tolkien Parties (who was an
attorney at Morrell, Peel & Gamlen at the time). The Tolkien Parties were also able
to confirm that it was sent to Christopher Tolkien because the document was
collected from Mr. Tolkien's files.

Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters which relate to legal issues concerning

Each of enumerated agenda

items identifies categories relates to

. Given that each of these topics necessarily involves legal issues to be discussed between the Tolkien Parties and their counsel, and that the document was prepared by counsel and specifically sent to Mr. Tolkien in advance of and in preparation for their meeting, the document is protected by the attorney-client privilege and attorney work product doctrine. Defendants are not entitled to discover what issues the Tolkien/HC Parties' counsel deemed critical or important at any given time, nor what issues counsel sought to discuss with its clients, as those decisions necessarily reflect the mental impressions and legal conclusions of counsel.

8. **Document No. 86:** This document is a March 18, 1998 fax letter from Cathleen Blackburn to Christopher Tolkien, which outlines several legal items Ms.

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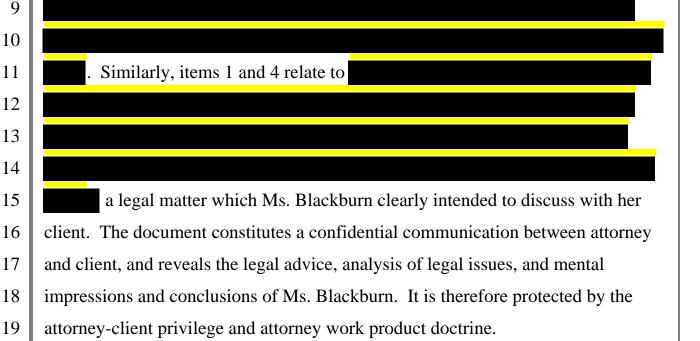
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Blackburn intends to discuss with Mr. Tolkien. On its face, the document is a
confidential attorney-client privileged communication. The document details a
select list of items which Ms. Blackburn intends to discuss with her client. The
selection of each of the items for discussion reflects Ms. Blackburn's mental
impressions and conclusion that the items raise legal issues which need to be
discussed.

Merely by way of example, item 2 tees up for discussion



Document No. 99: This document is the December 1998 version of

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Blackburn's legal analysis, mental impressions and conclusions regarding the
respective legal rights of the Tolkien/HC Parties and the appropriate manner for
administering the rights jointly held by the Tolkien/HC Parties. It is a confidential
document prepared by Ms. Blackburn, reflecting her legal advice, mental
impressions and conclusions with respect to matters of common interest affecting
the Tolkien/HC Parties' jointly held legal and commercial rights. Through these
Permissions Guidelines, the Tolkien Estate and HarperCollins worked together to
formulate positions and policies regarding third party requests or potential
infringements of their jointly-held rights. The document is protected under the
common interest privilege.

Moreover, this particular version of the Permissions Guidelines is a version forwarded by Ms. Blackburn to Christopher Tolkien, and contains Ms. Blackburn's explanatory handwritten notes and updates in the margin on virtually every page of the document. For this reason as well, the document is an attorney-client privileged communication reflecting Ms. Blackburn's work product; it should not be disclosed.

10. Document No. 100: This document is a September 2, 2005 email from Cathleen Blackburn to Christopher and Baillie Tolkien. Adam Tolkien, as a representative of the Tolkien Parties (at@laphalene.org) and Steven Maier, Ms. Blackburn's partner and litigation counsel for the Tolkien Parties, are copied on the email. The email discusses We know from

testimony and other documents produced in the case that various legal disputes and other matters at issue among Zaentz and the Tolkien Parties were discussed at the September 7 meeting, including: (a) legal disputes over who had the right to register trademarks in International Class 16 and the appropriate merchandising royalty rate for merchandise sublicensed by Zaentz to New Line; (b) the negotiations occurring at the time over the stage rights amendment to the 1969

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Agreements; (c) Zaentz's requests (i) to use the name Tolkien Enterprises beyond	f
the contractually-allotted time, (ii) to give its computer games licensee the right t	О
use quotations from the Tolkien Works; and (iii) the availability of the film and	
other rights in and to Professor Tolkien's other works; and various other legal	
matters in issue at the time. In Document No. 100, Ms. Blackburn	

This document is plainly a confidential communication between Ms. Blackburn and her clients reflecting the legal advice, mental impressions and conclusions of counsel. It is protected by the attorney-client privilege and attorney work product doctrine.

Document No. 146: This document is an agenda outlining matters to be discussed at an upcoming Tolkien Committee Meeting between Cathleen Blackburn, representatives of HarperCollins, and representatives of the Tolkien Estate. We believe the document was prepared by Cathleen Blackburn to identify issues which she intended to discuss with Tolkien Estate representatives and their joint rights holder, HarperCollins. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters which relate to legal issues concerning

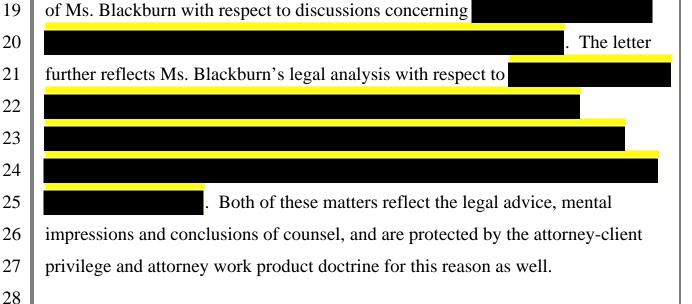
Each of these identified categories relates to subjects of shared legal interest between the Estate and HarperCollins, vis-a- vis third parties, and the Tolkien/HC Parties were meeting to discuss these issues and to formulate positions and responsive action items in order to protect and enforce their jointly-held rights. We know that Ms. Blackburn sent the agenda to her client, because the document was located in Christopher Tolkien's files. As a result, the document is protected by the attorney-client privilege. Defendants are not entitled to discover what issue the

Tolkien/HC Parties' counsel deemed critical or important at any given time and
which it sought to discuss with its clients, as those decisions necessarily reflect the
mental impressions and legal conclusions of counsel, and constitute protected work
product. That members of HarperCollins attended the meeting at issue does not
destroy the privilege – the relevant agenda items concern subjects of shared legal
and commercial interest between the Tolkien Estate and HarperCollins, as joint
rights holders. The common interest privilege therefore applies.
12. <u>Document No. 153</u> : This document is a confidential attorney-client

Cathleen Blackburn to her client, Christopher 10	olkien. The letter discusses
	. The letter also details
communications between Ms. Blackburn and the	Tolkien Parties' U.Sbased
attorney, Paul Sleven,	. The document reveals the
legal advice, mental impression and conclusions of both Ms. Blackburn and Mr.	
Sleven; as such, it is protected by the attorney-client privilege and attorney work	
product doctrine	

The letter also reflects the legal advice, mental impressions and conclusions

privileged fax transmission letter, dated February 21, 1993, from outside counsel



13. <u>Document No. 155</u> : This document is a confidential attorney-client
privileged fax letter, dated February 6, 1993, from Christopher Tolkien to his
attorney, Cathleen Blackburn. As referenced in the letter, Mr. Tolkien writes to
Ms. Blackburn

Given that the letter is a confidential attorney-client communication from Mr. Tolkien to Ms. Blackburn and seeks her legal advice, and also reflects communications from the Tolkien Parties' counsel Mr. Williamson, it is unquestionably protected by the attorney-client privilege. Additionally, Defendants are not entitled to discover what issue the Tolkien/HC Parties' counsel deemed critical or important at any given time and which it sought to discuss with its clients, as those decisions necessarily reflect the mental impressions and legal conclusions of counsel, and constitute protected work product.

- **14.** <u>Document No. 170</u>: This document is the same email chain discussed above as Document No. 18 (Issue No. 5, above). For the reasons discussed above, the document should not be produced.
- **15. Document No. 172:** This email chain is an excerpt of the same email chain included in Document No. 17 (Issue No. 4, above). For the reasons discussed above, the document should not be produced.
- **16. Document No. 173:** This document is an attorney-client privileged email, dated January 16, 2006, from Adam Tolkien to Cathleen Blackburn. In this email, Mr. Tolkien discusses Ms. Blackburn's recent email concerning her analysis of

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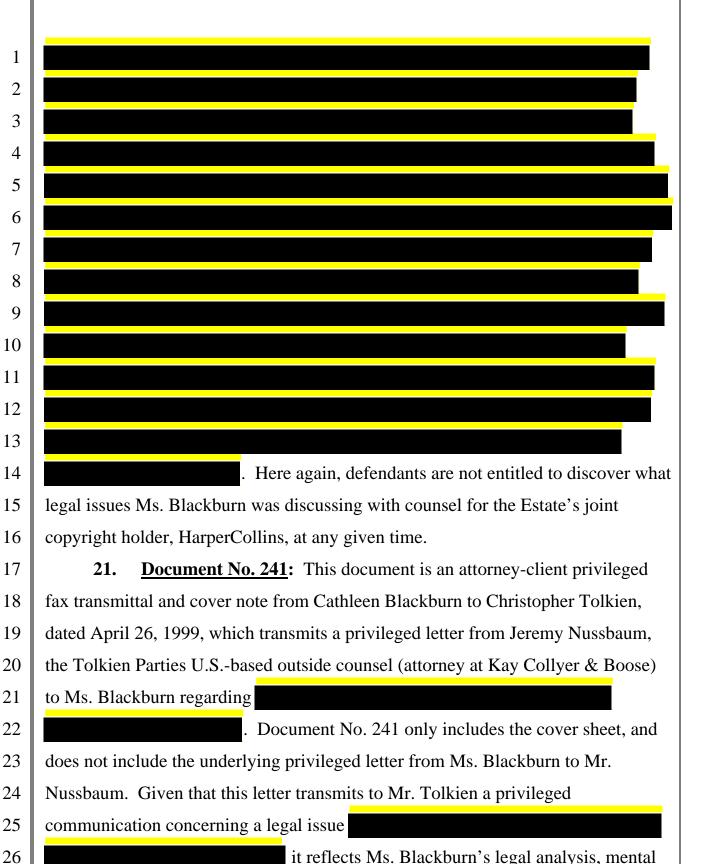
. Mr. Tolkien clearly sent this email as a
precursor to future discussions with his counsel; the document describes the legal
advice he is seeking from Ms. Blackburn regarding the
document is a protected attorney-client privileged communication. In addition,
because the email also quotes from and references Ms. Blackburn's prior email to
Mr. Tolkien, it also reflects Ms. Blackburn's legal analysis, mental and impression
and conclusions and is also protected by the attorney work product doctrine.
17. <u>Document No. 174</u> : This document is an attorney-client privileged
email, dated January 17, 2006, from Cathleen Blackburn to Adam Tolkien. It is
Ms. Blackburn's reply to Mr. Tolkien's January 16, 2006 email (Document No.
173, discussed at Issue No. 16, above). Ms. Blackburn answers in detail Mr.
Tolkien's questions regarding
. She also explains the basis for the legal positions taken
by the Tolkien Estate
. Manifestly, this document reflects Ms.
Blackburn's legal analysis, mental and impressions and conclusions and is
protected by both the attorney-client privilege and attorney work product doctrine.
18. <u>Document No. 202</u> : This document is an attorney-client privileged
fax transmission with cover note from Cathleen Blackburn to Christopher Tolkien,
dated June 21, 1996, which attaches a draft agenda for an upcoming June 27, 1996
Tolkien Committee Meeting. As indicated in the cover note, the draft agenda was
prepared by Ms. Blackburn and sent to Mr. Tolkien for his review. (The fax
transmission also attached additional non-privileged attachments which have been
previously produced to the extent responsive, and are not part of the logged

Although the document primarily discusses matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to

document.)

Defendants' document requests (as narrowed by the parties' meet and confer
discussions), there are several matters which relate to legal issues concerning
. Given that each of these topics necessarily involves legal issues to be
discussed between the Tolkien Parties and their counsel (and, later, joint rights
holder HarperCollins), and given that the document was prepared by counsel and
specifically sent to Mr. Tolkien in advance of the meeting for his review, the
document is protected by the attorney-client privilege and attorney work product
doctrine. Defendants are not entitled to discover what issue the Tolkien/HC
Parties' counsel deemed critical or important at any given time and which it sought
to discuss with its clients, as those decisions necessarily reflect the mental
impressions and legal conclusions of counsel.
Moreover, to the extent Ms. Blackburn later forwarded the agenda to
HarperCollins' David Brawn (as the cover letter suggests), the privilege would not
be vitiated, because the matters at issue constitute legal matters of common interest
between the Tolkien Parties and the HarperCollins Parties concerning
19. Document No. 213: This is an attorney-client privileged letter from

Tolkien Enterprises, predecessor-in-interest to Zaentz, regarding as well
as an attorney-client privileged letter from Priscilla Tolkien to Ms. Blackburn. This
document only consists of the privileged cover letter and does not include the
attachments (which were either separately logged or produced, as appropriate).
"Sierra" refers to Sierra Online, a video game company who entered into a
sublicense with Zaentz to create video games based on the Tolkien Works. Sierra
had proposed that a recording artist, Loreena McKennitt, compose some songs to be
incorporated into their computer game and a derivative soundtrack album, and Ms.
McKennitt wanted permission to use words and lyrics from the Tolkien Works in
those songs. At the time, Ms. Blackburn was advising her clients the Tolkien
Estate as to the legal issues surrounding
. This letter is
a precursor to a future discussion between Ms. Blackburn and her client concerning
Defendants are not entitled to discover what issues the Tolkien/HC Parties' counsel,
Ms. Blackburn, deemed critical or important at any given time, or what issues
counsel sought to discuss with her clients. Those decisions necessarily reflect the
mental impressions and legal conclusions of counsel; the document reflects
protected work product and constitutes an attorney-client privileged
communication.
20. Document No. 240: This document is a faxed letter dated April 30,
1999, from Cathleen Blackburn to Adrian Laing, general counsel at HarperCollins,
and David Brawn, publishing executive at HarperCollins. The document transmits
a fax from Ms. Blackburn to Al Bendich, a senior executive at Zaentz, regarding
"Sierra On-line Computer Games." The non-privileged attachment was not
withheld on privilege grounds.



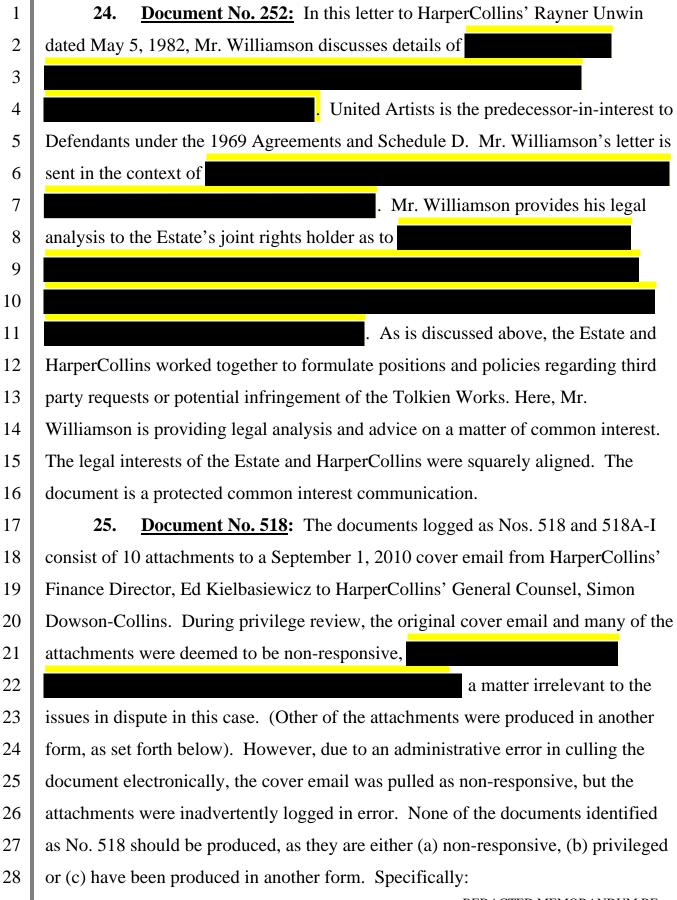
attorney work product doctrine.

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impressions and conclusions, and it is protected by the attorney-client privilege and

icuci from Dick williamson, the Torkich Larties former attorney, to his chemis
John Tolkien, Michael Tolkien and Priscilla Tolkien, cc: Christopher Tolkien, dated
December 9, 1983. In his letter, Mr. Williamson reports to his clients on
. The letter details Mr. Williamson's
analysis as to as well as his mental impressions and
conclusions, and advice concerning . He also reports
to his clients on various matters not relevant to the issues in dispute here and/or
concerning works other than the Tolkien Works (which matters are non-responsive
to defendants' discovery requests). Mr. Williamson also discusses
. The
document reflects Mr. Williamson's legal analysis, mental and impressions and
conclusions. It is protected by the attorney-client privilege and attorney work
product doctrine.
23. <u>Document No. 250:</u> This is another attorney-client privileged
communication from Mr. Williamson to John, Michael and Priscilla Tolkien dated
January 17 1983. Mr. Williamson discusses a variety of topics, most of which are
wholly irrelevant to the disputed issues in this litigation and which are not
responsive to Defendants' document requests (as narrowed by the parties' meet and
confer discussions). However, there are a few relevant legal matters discussed,
including
. Plainly, this document is protected by the
attorney-client privilege and attorney work product doctrine.



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but also privileged and confidential.

(a) No. 518 is a cover email between HarperCollins executive (Mr.
Kielbasiewicz) and HarperCollins' General Counsel (Mr. Dowson-Collins), in
which Mr. Kielbasiewicz seeks legal advice about
. It is non-responsive, but also privileged on its face
and highly confidential. As noted, it had originally been culled as non-responsive.
(b) No. 518A is an attachment to the original privileged email. It is an email
from Robin Thomson (HarperCollins royalty department) to Mr. Kielbasiewicz,
forwarding an email from Gloria Adams (assistant in HarperCollins' legal
department) to David Brawn and Robin Thomson, cc David Daley, a HarperCollins
in-house attorney. That email attaches an email from General Counsel Mr.
Dowson-Collins to Cathleen Blackburn. The subject,
. The attachment is non-responsive,

(c) No. 518B is an attachment to the original privileged email. It is an email from Mr. Thomson to Mr. Kielbasiewicz, forwarding an email chain between attorney David Daley and Robin Thomson, again discussing division of revenues between the Estate and HarperCollins. These emails are non-responsive, but also privileged and confidential. No. 518B also attaches (i) a copy of the executed stage rights amendment dated as of September 27, 2006. That amendment has previously been produced, as PLAINTIFFS025830-847; (ii) a copy of an October 27, 2006 letter and royalty statement from Zaentz to HarperCollins, previously produced as PLAINTIFFS025823-24 and 25828-29; and (iii) a letter dated May 11, 2007 from Gavin Stenton, an attorney at the law firm Manches LLP (counsel for the Estate), to Robin Thomson, cc David Brawn, David Daley and Zaentz executive Al Bendich, which discusses stage rights royalties and is wholly non-responsive, as evidenced by the fact that Zaentz did not produce this document from its own files.

(d) No. 518C is an attachment to the original privileged email. It is an email from Mr. Thomson to Mr. Kielbasiewicz, forwarding an email from attorney David

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Daley to Robin Thomson,
. The emails are non-responsive, but also privileged and
confidential. No. 518C also attaches three documents: (i) a copy of the November
16, 1981 letter agreement, previously produced as PLAINTIFFS037652-657; (ii) a
copy of the October 20, 1975 amendment to the 1969 agreements, previously
produced as PLAINTIFFS006098-6104; and (iii) a file memorandum prepared by
Dick Williamson, sent to HarperCollins as joint copyright holder, in which Mr.
Williamson provides his legal interpretation and analysis of
. Mr. Williamson also discusses in detail the legal advice and
analysis received from outside counsel Saul Meyers and Harold Berkowitz (from
the law firm of Szold, Brandwen, Meyers & Altman) – the New York lawyers who
negotiated the 1969 Agreements on behalf of the Estate and HarperCollins. This
last attachment clearly reflects the impressions and legal conclusions of Messrs.
Williamson, Meyers and Berkovitz, as well as confidential communications
between the New York lawyers and their clients concerning
. The document is plainly privileged.
(e) No. 518D is an attachment to the original privileged email. It is an email
from Mr. Thomson to Mr. Kielbasiewicz, forwarding an email chain between
HarperCollins in house attorney David Daley, HarperCollins General Counsel
Simon Dowson-Collins, Robin Thomson and David Brawn, again discussing
division of revenues between the Estate and HarperCollins. The email reveals the
legal advice, mental impressions and conclusions of HarperCollins' in house
attorneys concerning both
. The emails
are non-responsive, but also privileged and confidential. Earlier emails in the chain
are between Cathleen Blackburn, Robin Thomson and David Brawn. In these
emails, Ms. Blackburn provides her legal analysis concerning

. These are matters of common interest, and
are protected from discovery. The remaining discussion
which, again, is wholly non-responsive.
(f) No. 518E is an attachment to the original privileged email. It is an email
from Mr. Thomson to Mr. Kielbasiewicz, forwarding an email chain between
HarperCollins in house attorney David Daley, HarperCollins General Counsel
Simon Dowson-Collins, Robin Thomson and David Brawn, again discussing
. The email is an
attorney-client privileged communication between HarperCollins employees and
HarperCollins in house counsel, and it reveals the legal advice, mental impressions
and conclusions of HarperCollins' in house attorneys concerning
. The emails are non-responsive, but also
privileged and confidential. The earlier emails in the chain, between Cathleen
Blackburn and Robin Thomson, are the same emails discussed in No. 518D, and
should not be disclosed for the reasons discussed above.
(g) No. 518F is an attachment to the original privileged email. It is an email
from Mr. Thomson to Mr. Kielbasiewicz, forwarding an email chain between
HarperCollins in house attorney David Daley, HarperCollins General Counsel
Simon Dowson-Collins, Robin Thomson and David Brawn. It is essentially a
continuation of the discussion described in 518D and E, concerning
. For the reasons discussed above,
the attachment is non-responsive, privileged and highly confidential.
(h) No. 518G is an attachment to the original privileged email. It is an email
from Mr. Thomson to Mr. Kielbasiewicz, forwarding the email chain between

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above. For the reasons discussed above, the attachment should not be produced.
However, the document also attaches a December 2, 1936 Agreement between
Professor Tolkien and George Allen & Unwin, Ltd, which was previously produced
as PLAINTIFFS044328-42330A.

(i) No. 518H is an attachment to the original privileged email. It is an email
from Mr. Thomson to Mr. Kielbasiewicz. The email makes clear that all of the
previous attachments discussed herein as 518A-G, are privileged – Mr. Thomson
notes that he will be forwarding

This demonstrates that this entire Document No. 518, reflects the legal investigation and analysis of HarperCollins attorney David Daley and are is privileged (in addition to being non-responsive). The document also forwards the exchange between Cathleen Blackburn, Robin Thomson and David Brawn discussed in Nos. 518D-F, above. And, it attaches a series of royalty statements from Zaentz which were previously produced as PLAINTIFFS001472-1493.

- (i) No. 518I is an attachment to the original privileged email. It is an email from Mr. Thomson to Mr. Kielbasiewicz, forwarding an email chain between HarperCollins attorneys David Daley and Simon-Dowson Collins and Harper Collins employees David Brawn, Robin Thomson and Ed Kielbasiewicz, reflecting counsel's legal advice and analysis. It also includes a draft email prepared by David Daley, which Mr. Thomson indicates was never sent. The document is nonresponsive, but it is also is an attorney client privileged document and an attorney work product communication between HarperCollins and its in house counsel.
 - **26. Document No. 842:** This document is a 2011 email chain discussing

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. The chain begins with an email dated February 16, 2011,
from Lucy Vanderbilt, Group Rights Director at HarperCollins, to Simon Dowson-
Collins, General Counsel for HarperCollins, asking for legal advice and assistance
on the issue and forwarding an earlier email discussion between Ms. Vanderbilt and
Juliet Mason at Zaentz. Ms. Vanderbilt's email to Mr. Dowson-Collins is
forwarded to various people within HarperCollins: Robin Thompson (royalties
department at HarperCollins), Ed Kielbasiewicz (HarperCollins' Finance Director
and Company Secretary), David Brawn and Eleanor Goymer (head of fiction
publishing rights at HarperCollins). The email chain continues among these
internal HarperCollins recipients, and the discussion centers around
. Because questions are posed to Mr.
Dowson-Collins, the document constitutes an attorney-client privileged
communication. However, in reviewing the document for this in camera
submission, we realized that the document should more appropriately have been
redacted, since the portion of the email chain constituting the discussion between
Ms. Vanderbilt and Ms. Mason (from Zaentz) is not privileged. We will therefore
produce the document in redacted form.
27. Document No. 852: This is a letter from David Brawn at
HarperCollins to Cathleen Blackburn dated November 21, 1997, concerning
. The communication is made to facilitate Ms. Blackburn's
protection of the Estate and HarperCollins' jointly held rights. The Estate and

INSPECTION

HarperCollins' legal interests are aligned, and Ms. Blackburn and Mr. Brawn were

1	working together to further that common legal interest. The document is thus
2	protected from disclosure.
3	28. <u>Document No. 936:</u> This is a letter from Rayner Unwin to Dick
4	Williamson dated February 2, 1982. Mr. Unwin details
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10	. Mr.
11	Unwin, on behalf of HarperCollins' predecessor George Allen & Unwin, co-owner
12	with the Estate of intellectual property, is seeking legal advice from Mr.
13	Williamson regarding
14	. The common interest
15	privilege applies in this context.
16	29. Document No. 992: This is a memo dated December 19, 1991 from
17	Mary Butler, former publishing executive at HarperCollins, to Pam White, a
18	HarperCollins Rights and Contracts Manager. Prior to sending the memo, Ms.
19	Butler had discussed with Dick Williamson whether the Estate and HarperCollins,
20	as joint copyright owners in and to the Tolkien Works,
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27	. It is protected by the common interest privilege.

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1900 Avenue of the Stars	Los Angeles, California 9	

30. Document No. 1005: This is a letter from Cathleen Blackburn to
HarperCollins' Mary Butler dated July 22, 1993, enclosing a draft letter to Laurie
Battle (licensing executive at Zaentz) and an accompanying draft table, concerning
computer games. (The draft was logged separately and is not part of this
document). At the time, the Tolkien/HC Parties and Zaentz were engaged in a
dispute over computer games. Zaentz had begun to contend that the newer types of
computer games being developed by HarperCollins' third party licensee under
certain 1990 and 1991 licenses were more "graphics-based" than "text-based," and
thus more appropriately fell on Zaentz's side of the "line." As joint rights holders
in the Tolkien Works, the Tolkien Estate and HarperCollins were working closely
together to protect their jointly held rights and in anticipation of potential litigation
with Zaentz. In the course of this dispute, Laurie Battle had asked Ms. Blackburn
to prepare a chart detailing the computer games that had been licensed by
HarperCollins to date, and to provide a "clear picture" of the history of such
licensing. Ms. Blackburn had indicated to Ms. Battle that she would be soliciting
the assistance of Mary Butler in that endeavor. This document was prepared to
facilitate Ms. Blackburn's and Ms. Butler's joint efforts to deal with Zaentz on the
disputed computer games issue and protect and assert the Tolkien/HC Parties'
common legal interests.
31 Dogument No. 1000 This is a letter from Payner Unwin to Dick

31. Docume	III No. 1040. This is a fetter from Rayner Unwin to Dick
Williamson discussin	g an enclosed letter from Beam Software (which has been
produced as PLAINT	TFFS037190-91). The document reflects
	. The Tolkien Estate and HarperCollins were working
together to protect and	d enforce their jointly-held rights in and to the Tolkien Work
The document is thus	protected as a common interest communication.

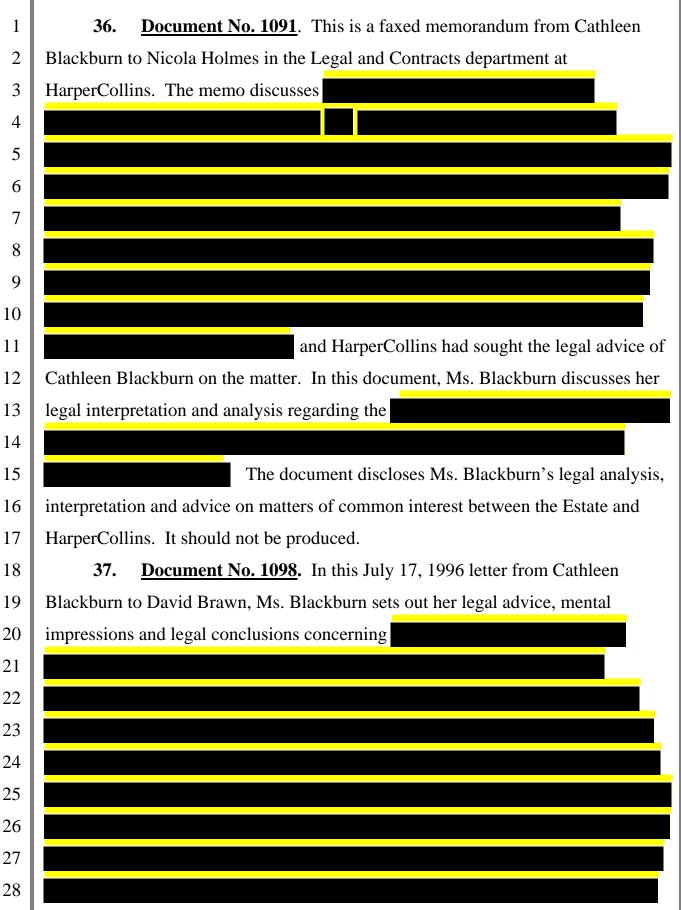
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32. Document No. 1062 . This is a typewritten agenda in preparation for a
meeting between HarperCollins and Dick Williamson, with handwritten notes,
dated June 29, 1988. We believe that the document was prepared by Mary Butler,
and that the handwritten notes were made by Ms. Butler during the meeting,
reflecting matters that were discussed at the meeting. Many of the matters listed in
the document are wholly irrelevant to the disputed issues in this litigation and are
not responsive to Defendants' document requests (as narrowed by the parties' meet
and confer discussions). There are, however, several issues discussed concerning
. The document
. The document reflects privileged communications on matters of common interest. Defendants are
reflects privileged communications on matters of common interest. Defendants are
reflects privileged communications on matters of common interest. Defendants are not entitled to discover what legal and commercial issues the parties were
reflects privileged communications on matters of common interest. Defendants are not entitled to discover what legal and commercial issues the parties were discussing concerning their shared rights, at any given time.
reflects privileged communications on matters of common interest. Defendants are not entitled to discover what legal and commercial issues the parties were discussing concerning their shared rights, at any given time. 33. Document No. 1072. In this February 4, 1988 letter to Dick
reflects privileged communications on matters of common interest. Defendants are not entitled to discover what legal and commercial issues the parties were discussing concerning their shared rights, at any given time. 33. Document No. 1072. In this February 4, 1988 letter to Dick Williamson, Rayner Unwin solicits Mr. Williamson's legal advice in connection
reflects privileged communications on matters of common interest. Defendants are not entitled to discover what legal and commercial issues the parties were discussing concerning their shared rights, at any given time. 33. Document No. 1072. In this February 4, 1988 letter to Dick Williamson, Rayner Unwin solicits Mr. Williamson's legal advice in connection
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reflects privileged communications on matters of common interest. Defendants are not entitled to discover what legal and commercial issues the parties were discussing concerning their shared rights, at any given time. 33. Document No. 1072. In this February 4, 1988 letter to Dick Williamson, Rayner Unwin solicits Mr. Williamson's legal advice in connection with The document clearly seeks Mr. Williamson's legal advice on matters of common interest between the

representatives at an upcoming meeting. Although the document primarily lists

matters which are wholly irrelevant to the disputed issues in this litigation and

rch 27, 2001. It contains the handwritten
were made at the meeting with Ms.
matters which relate to legal issues
another matter of common interest
nselves, and Mr. Brawn's handwritten
ce, mental impressions and legal
ce, mental impressions and legal mon interest between HarperCollins and
ce, mental impressions and legal mon interest between HarperCollins and
nselves, and Mr. Brawn's handwritten ce, mental impressions and legal mon interest between HarperCollins and th above, the document is privileged. REDACTED MEMORANDUM RE: DOCUMENTS SELECTED FOR IN CAMERA INSPECTION



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2	. Ms.				
3	Blackburn does so in furtherance of the parties' shared legal and commercial rights.				
4	The communication is protected by the common interest privilege.				
5	38. Document No. 1106 . This is an April 23, 1999 fax letter from				
6	Cathleen Blackburn to the Tolkien Estate's U.Sbased outside counsel, Jeremy				
7	Nussbaum of the Kay Collyer &Boose firm, seeking legal consultation and advice				
8	concerning				
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13	This is clearly an attorney-client privileged communication. It also reveals Ms.				
14	Blackburn's mental impressions, legal conclusions and analyses, and thus the				
15	document constitutes attorney work product as well.				
16	39. Document No. 1107 . This is an April 26, 1999 faxed letter from				
17	Cathleen Blackburn to David Brawn, concerning				
18	. The letter attaches the April 26, 1999 fax				
19	from Ms. Blackburn to Christopher Tolkien attaching her letter to outside counsel				
20	Jeremy Nussbaum, separately logged as No. 241 (Issue No. 21, above). As				
21	discussed above in Issue Nos. 20 and 21, the matter being discussed between and				
22	among the Estate, HarperCollins, and counsel is the legal dispute with Zaentz				
23	regarding				
24					
25	. As joint rights holders in and to the Tolkien Works, the				
26	Tolkien/HC Parties shared a common interest privilege with respect to				
27	administration and licensing of their joint rights, including with respect to				
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. Here again, defendants are						
not entitled to discover what legal disputes Ms. Blackburn was discussing with the						
Estate's joint copyright holder, HarperCollins, at any given time.						
40. Document No. 1131 . This are typewritten notes prepared by Mary						
Butler, memorializing the discussions at a January 27, 1986 meeting with Dick						
Williamson, his colleague at the law firm of Morrell, Peel & Gamlen, attorney						
Philip Bradley, and Rayner Unwin. Much of the document discusses matters that						
are non-responsive and wholly irrelevant to the present case, such as						
These legal matters were discussed in confidence by joint rights						
holders in furtherance of protecting and asserting their shared rights. The documen						
should not be produced.						
41. <u>Document No. 1151</u> . This is a letter from Dick Williamson to Rayner						
Unwin dated November 25, 1986 in which Mr. Williamson details several legal						
issues arising out of						

as a result,

the document reveals the mental impressions and conclusions of counsel on a					
matter of common interest between the Estate and HarperCollins. Mr. Williamson					
further advises Mr. Unwin as to how he believes the Tolkien/HC Parties should					
handle certain of these matters. Mr. Williamson is clearly providing legal advice on					
matters of common interest between the Tolkien Estate and HarperCollins to					
protect and enforce their jointly held rights					
The document is protected by the common interest privilege.					
42. <u>Document No. 1166</u> . This is a letter from Dick Williamson to Rayner					
Unwin dated December 24, 1985 concerning a third party permission request to					
produce a dramatic performance of The Hobbit. Mr. Unwin had sent the request to					
Mr. Williamson to seek his legal advice and counsel as to					
. In this document, Mr.					
Williamson provides his legal advice and conclusions on the subject, as well as					
Mr. Williamson's legal advice as					
Mr. Williamson's legal advice as to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly					
<u> </u>					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins.					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. <u>Document No. 1167</u> . This is a letter dated December 3, 1985 from					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. <u>Document No. 1167</u> . This is a letter dated December 3, 1985 from Rayner Unwin to Dick Williamson, enclosing correspondence concerning a third					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. Document No. 1167. This is a letter dated December 3, 1985 from Rayner Unwin to Dick Williamson, enclosing correspondence concerning a third party permission request about a potential theme park (the enclosure is not included					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. Document No. 1167. This is a letter dated December 3, 1985 from Rayner Unwin to Dick Williamson, enclosing correspondence concerning a third party permission request about a potential theme park (the enclosure is not included as part of this document). Mr. Unwin notes					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. <u>Document No. 1167</u> . This is a letter dated December 3, 1985 from Rayner Unwin to Dick Williamson, enclosing correspondence concerning a third party permission request about a potential theme park (the enclosure is not included as part of this document). Mr. Unwin notes and asks Mr. Williamson to provide his legal opinion.					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. Document No. 1167. This is a letter dated December 3, 1985 from Rayner Unwin to Dick Williamson, enclosing correspondence concerning a third party permission request about a potential theme park (the enclosure is not included as part of this document). Mr. Unwin notes and asks Mr. Williamson to provide his legal opinion. The matter at issue involves efforts to assert and protect the Tolkien Estate and					
to how to best protect and enforce the Tolkien Estate and HarperCollins' jointly held rights, are matters of common legal and commercial interest between the Estate and HarperCollins. 43. Document No. 1167. This is a letter dated December 3, 1985 from Rayner Unwin to Dick Williamson, enclosing correspondence concerning a third party permission request about a potential theme park (the enclosure is not included as part of this document). Mr. Unwin notes and asks Mr. Williamson to provide his legal opinion. The matter at issue involves efforts to assert and protect the Tolkien Estate and HarperCollins' jointly held rights vis-à-vis third parties. The document is protected					

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2	. The document reveals				
3	communications about matters of common interest, including				
4	. The document is a				
5	protected common interest communication.				
6	45. Document No. 1202. This March 4, 1982 letter from Dick				
7	Williamson to Mr. Stuart A. Galloway, Esq. has already been produced as				
8	PLAINTIFFS010650 and again as PLAINTIFFS013142. The document was				
9	mistakenly put on the privilege log in error.				
10	46. <u>Document No. 1212</u> . This letter from Dick Williamson to Rayner				
11	Unwin dated December 23, 1982 relates to				
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18	. The "Roy Gainsburg" to which Mr. Williamson refers is an				
19	attorney at Szold & Brandwen in New York – outside counsel who was advising				
20	the Tolkien/HC Parties in connection with this and other matters. The document is				
21	protected as a common interest communication.				
22	47. Document No. 1221 . In or about the spring of 1983, the Tolkien/HC				
23	Parties had discovered an infringing product – the Hobbit Icon Mini-Computer.				
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25	. In this June 28, 1983 letter, Rayner Unwin is seeking Mr. Williamson's				
26	legal advice as to				
27	. This is a common interest communication concerning a legal matter				
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communication.

involving the prote	ection and enforcement	of the Tolkien/HC Pa	arties' jointly held
rights, and is thus p	protected from disclosur	re.	

- 48. **Document No. 1223**. This document has already been produced as PLAINTIFFS044226. The document was mistakenly put on the privilege log in error. However, because it is a non-identical copy of the previously produced document (it has a few handwritten notations), the Tolkien/HC Parties will produce this version of the document to defendants.
- **49. Document No. 1253**. In this March 26, 1987 document, Rayner Unwin seeks Mr. Williamson's legal advice as to The Estate's and HarperCollins' legal and commercial interests in dealing with this third party are wholly aligned, and Mr. Unwin and Mr. Williamson were working together The document is a protected common interest
- 50. **Document No. 1262.** This document is an agenda outlining matters to be discussed at an upcoming Tolkien Committee Meeting between Cathleen Blackburn, representatives of HarperCollins, and representatives of the Tolkien Estate. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters which relate to legal issues concerning

Each of these identified categories relates to subjects of shared legal interest between the Estate and HarperCollins vis-a- vis third parties, and the Tolkien/HC

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Parties were meeting to discuss these issues and to formulate positions and
responsive action items in order to protect and enforce their jointly-held rights.
Defendants are not entitled to discover what particular legal issues the Tolkien/HC
Parties were discussing at any given time.

51. **Document No. 1276.** This is an agenda detailing matters to be discussed between the Tolkien/HC Parties and Mr. Williamson at an upcoming meeting. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters which relate to legal issues concerning

These are matters of shared legal interest between the Tolkien Parties and their joint rights holders, HarperCollins. This is a protected common interest communication.

52. Document No. 1286. These are Mary Butler's notes of her conversation with Dick Williamson on August 28, 1991. Although the document discusses matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters reflected which relate to legal issues concerning

These were matters of shared legal and commercial interest between the Estate and HarperCollins, and Ms. Butler's communications with Mr. Williamson were made in furtherance of their commonly-held rights. This is a protected common interest communication. Defendants are not entitled to discover what particular legal issues

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the Tolkien/HC Parties were discussing at any given time particularly where, as
here, those interests are aligned as against Zaentz (and other third parties).

55. <u>Document No. 1289.</u> These are Mary Butter's notes of a meeting with
Dick Williamson on January 21, 1990. Although the document discusses matters
which are wholly irrelevant to the disputed issues in this litigation and which are
not responsive to Defendants' document requests (as narrowed by the parties' mee
and confer discussions), there are several matters reflected which relate to legal
issues concerning

. The document clearly reflects the mental impressions and conclusions of counsel: it discusses, for example, communications between Mr. Williamson and outside counsel Paul Sleven about

. It also reflects the legal advice of in house HarperCollins attorney

Patrick Swaffer concerning

. [After the Tolkien/HC

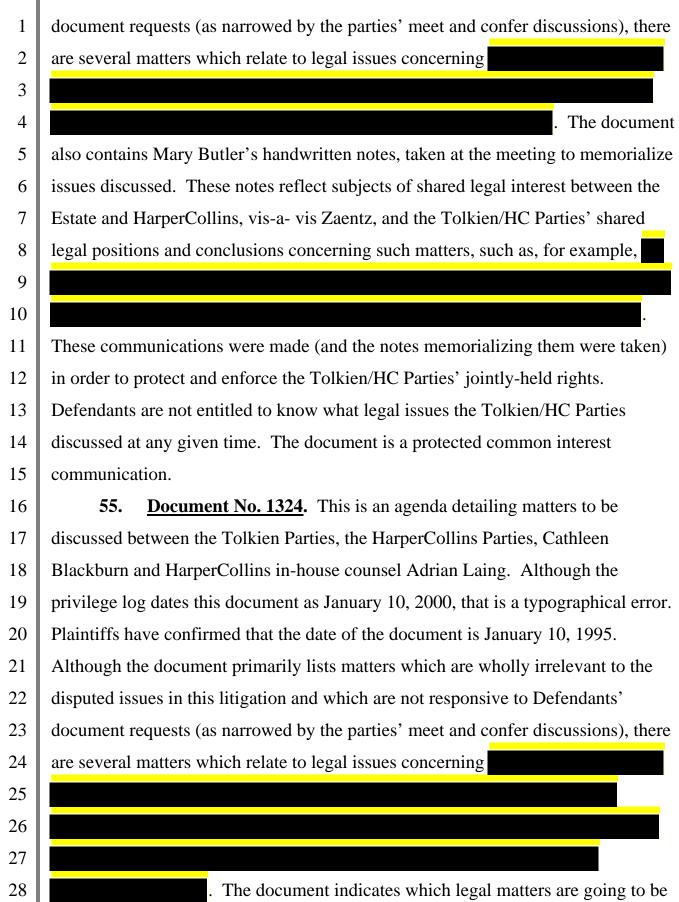
54. <u>Document No. 1315</u>. This document is an agenda outlining matters to be discussed at an upcoming Tolkien Committee Meeting between Dick Williamson, Cathleen Blackburn, Rayner Unwin, David Young and Mary Butler. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants'

Parties' filed their Confidential In Camera Brief, they learned that Mr. Swaffer was

mental impressions and conclusions of counsel on matters of common interest, the

former outside counsel for HarperCollins.] Because it reflects the legal advice,

document should not be produced.



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addressed by attorney Adrian Laing ("AL" in the document) and that Jim Fox,
another in house attorney for HarperCollins, will be briefed by Mr. Laing about
. Defendants are not entitled to discover
what issue the Tolkien/HC Parties' counsel jointly deemed critical or important at
any given time, nor are they permitted to learn what matters were being handled by
HarperCollins in house counsel at any given time, as those decisions necessarily
reflect the legal advice, mental impressions and legal conclusions of counsel. For
the reasons discussed above, the document is privileged.
Document No. 1326 . This is the same document as Document No. 59
(IN-7) -1

- (Issue No. 7), above, except that it contains additional handwritten notes of Mary Butler concerning the discussions she had with Ms. Blackburn on the subjects listed. For the reasons set forth above, the document is privileged.
- 57. **Document No. 1334**. This is an agenda detailing matters to be discussed between the Tolkien/HC Parties and Cathleen Blackburn at an upcoming meeting. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters which relate to legal issues concerning These are all subjects of shared legal and commercial interest between the Estate and HarperCollins, and the Estate and HarperCollins
- **58. Document No. 1369.** This is a June 5, 1984 letter from David Fielder, editorial director at HarperCollins, to Dick Williamson, concerning Mr. Williamson had been providing legal advice to the

were working jointly to further those common interests as against third parties.

Estate and HarperCollins jointly as to
. The letter is both a
follow up and a precursor to legal discussions between Mr. Williamson and
HarperCollins impacting the parties shared legal rights vis-à-vis third parties Beam
and Zaentz. The document is a protected common interest communication.
59. Document No. 1418. This is the same document as Document No.
1088 (Issue No. 34, above). For the reasons set forth above, the document is
privileged.
60. Document No. 1433 . This is an agenda prepared by Cathleen
Blackburn detailing matters to be discussed between the Tolkien Estate and their
attorney, Cathleen Blackburn, at an upcoming meeting on July 16, 2007. Although
the document primarily lists matters which are wholly irrelevant to the disputed
issues in this litigation and which are not responsive to Defendants' document
requests (as narrowed by the parties' meet and confer discussions), there are several
matters which relate to legal issues concerning
. The
document was prepared as a precursor to discussions between Ms. Blackburn and
her clients; defendants are not entitled to discover what issue the Tolkien Parties'

counsel deemed critical or important at any given time, as those decisions

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necessarily	reflect the legal advice,	mental impressions	and legal conclusions of
counsel. Fo	or the reasons discussed	above, the documen	t is privileged.

- 61. **Document No. 1457.** This document consists of an email from HarperCollins' David Brawn to HarperCollins in house attorney David Daley and HarperCollins marketing executive Barry Clark, forwarding an email from Cathleen Blackburn (via her assistant Ms. Peedell) and an attached summary of meeting between HarperCollins executives David Brawn, Barry Clark, David Daley, Cathleen Blackburn and her colleague at Manches, attorney Edward Humphries. This attached meeting summary details legal matters which were discussed at the meeting, including . The document plainly reflects advice, and mental impressions and conclusions of counsel for HarperCollins and counsel for the
- **62. Document No. 1470**. This is a letter dated September 12, 1969 from Rayner Unwin to Dick Williamson, concerning the negotiation and execution of the contracts at the heart of this litigation – the 1969 Agreements and Schedules D. Mr. Williamson provided legal advice to the Estate and HarperCollins on these matters, as joint rights holders.

Tolkien Estate, who were working together to further their shared legal and

commercial interests as joint rights holders.

- The document reflects shared legal matters between the Estate and HarperCollins concerning the state and status of these contracts; this common interest communication should not be produced.
- **63. Document No. 1524.** These are undated handwritten notes prepared by Mary Butler addressing various issues impacting the Estate and HarperCollins' shared legal and commercial rights. Most of the notes discuss matters which are wholly irrelevant to the disputed issues in this litigation and which are not

1	responsive to Defendants' document requests (as narrowed by the parties' meet and
2	confer discussions). There are, however, several matters which relate to legal
3	issues concerning
4	
5	. The document reflects legal discussions Ms. Butler was
6	having with Ms. Blackburn at the time concerning.
7	Defendants are not entitled to discover what shared legal issues the Estate and
8	HarperCollins were discussing at the time. These are protected common interest
9	communications.
10	64. Document No. 1525. This is a letter from Dick Williamson to Rayner
11	Unwin dated December 29, 1983. It is sent in connection with the dispute between
12	the Tolkien/HC Parties and Zaentz concerning
13	
14	. The document reflects Mr.
15	Williamson's legal advice, mental impressions and conclusions and legal opinions
16	and strategy with respect to this matter of shared legal
17	interest.
18	65. Document No. 1575. This is a letter dated August 3, 2000 from
19	Cathleen Blackburn to the Tolkien Estate's U.Sbased outside counsel, Jeremy
20	Nussbaum of the law firm of Kay Collyer & Boose. Ms. Blackburn solicits Mr.
21	Nussbaum's legal advice concerning
22	
23	
24	
25	. The document unquestionably is
26	protected by the attorney-client privilege and the attorney work product doctrine.
27	66. Document No. 1801 . This is a memorandum prepared by the Tolkien
28	Estate's attorney, Cathleen Blackburn, summarizing her mental impressions and

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legal conclusions following a July 24, 2001 meeting with representatives from
Zaentz. Mr. Nussbaum, the Tolkien Estate's U.Sbased outside counsel, and Ms.
Blackburn's colleague, attorney Edward Humphries, were also in attendance.
. Messrs. Nussbaum and Humphries and Ms.
Blackburn were not acting in a "business capacity," contrary to what Defendants
would have the Court believe. These attorneys attended the meeting as counsel for
the Tolkien Parties, to protect and assert their clients' legal rights (as well as those
of joint rights holders HarperCollins). These notes by the Tolkien Estate's counsel
are unquestionably her attorney work product, and they are not discoverable. They
reflect her mental impressions and conclusions, in that they reveal what she felt was
important to memorialize, and her interpretation of the matters discussed at the
meeting. Additionally Ms. Blackburn prepared these notes for her client
Christopher Tolkien's information, and another identical version of this document
was forwarded to Mr. Tolkien. Accordingly, even if the work product doctrine did
not apply, the document is protected by the attorney-client privilege. We note that
Warner has withheld similar documents prepared by its in house attorney Ben
Zinkin.
Document No. 1828. This is an email from HarperCollins' David
Marshall to Cathleen Blackburn dated August 11, 1998, seeking her legal advice
As is set forth above, employees of HarperCollins regularly sought Ms.
Blackburn's legal advice and counsel in dealing with third parties concerning rights

jointly held by the Estate and HarperCollins, and Ms. Blackburn provided that legal

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2	advice as to how to best protect and assert those commonly held rights. This
3	document concerns subjects of shared legal interests between the Estate and
4	HarperCollins, and Ms. Blackburn and Mr. Marshall were working jointly to
5	that common legal interest as against third parties.
6	68. Document No. 1829 . This email is Ms. Blackburn's response to
7	Marshall's request for legal advice concerning
8	referenced in Document No. 1828, above. Ms. Blackburn provides Mr. Mars
9	with her legal analysis of
10	
11	. The document reflects Ms. Blackburn'
12	advice, analysis, mental impressions and conclusions, and is a protected com-
13	interest document for the reasons set forth above.
14	69. Document No. 2057 . This document is a September 6, 1989 let
15	from Dick Williamson to Nigel Palmer, a solicitor at S.J. Berwin & Co.
16	specializing in film and television. Mr. Palmer was retained to represent and
17	the Estate and consult with Mr. Williamson in connection with
18	
19	In this document, Mr. Williamson provides his analysis of the factua
20	legal history, provides his legal opinion and contractual analysis as to
21	flags various legal questions and concerns, for which he and
22	Estate seek Mr. Palmer's advice, given his specialized knowledge bearing on
23	issues under negotiation. He does so in order to give solicitor Palmer the
24	background factual information and legal landscape, so that Mr. Palmer can p
25	legal advice to the Estate. The document also reflects communications Mr.
26	Williamson had with Professor Tolkien and other Estate representatives. The
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hat common legal interest as against third parties.
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flags various legal questions and concerns, for which he and the
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ssues under negotiation. He does so in order to give solicitor Palmer the
background factual information and legal landscape, so that Mr. Palmer can provide
egal advice to the Estate. The document also reflects communications Mr.
Williamson had with Professor Tolkien and other Estate representatives. The
document is protected under the attorney-client privilege and attorney work product

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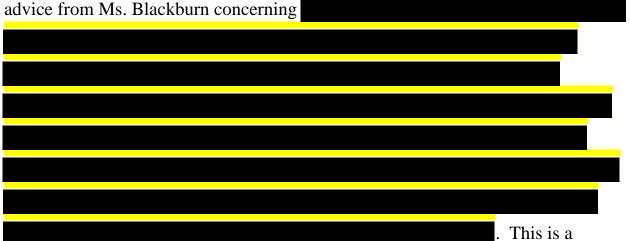
doctrine, as would be any other communication between co-counsel on such	legal
matters.	

by Cathleen Blackburn reflecting her conversation with her clients Christopher and Baillie Tolkien on July 26, 2001. Most of the document concerns matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions). There is a section, however, detailing Ms. Blackburn's discussions with her clients concerning

The discussion is rife with Ms. Blackburn's mental impressions and conclusions, as well as her legal advice as

71. <u>Document No. 2129</u>. This is a letter from HarperCollins' David Marshall to Cathleen Blackburn dated July 11, 2001. Mr. Marshall is seeking legal

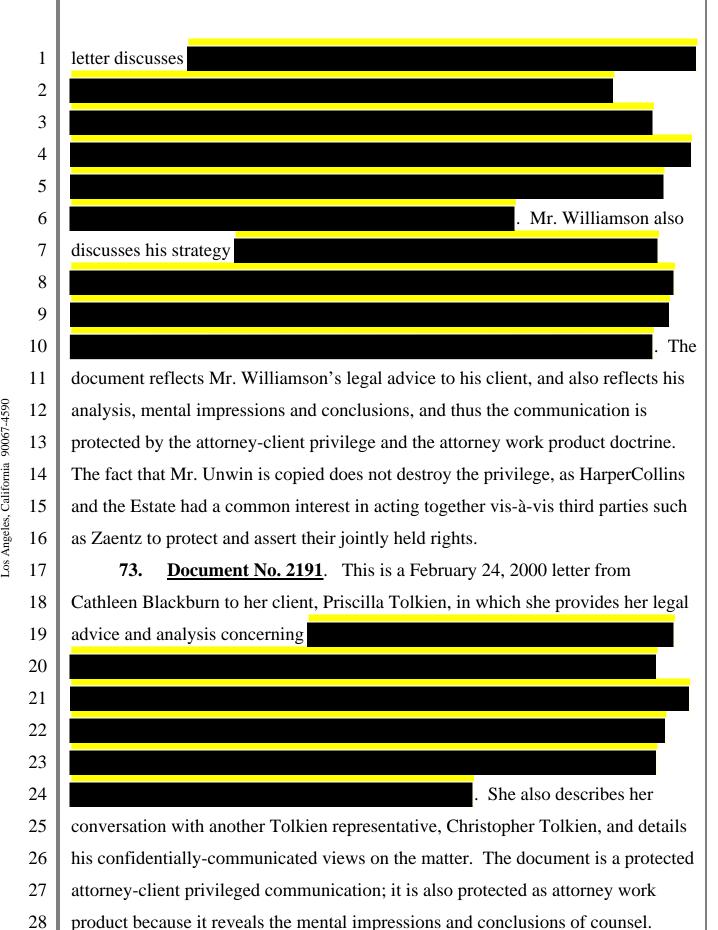
under the attorney-client privilege and attorney work product doctrine.



protected common interest communication.

72. <u>Document No. 2158</u>. This is a letter from Dick Williamson to his client, Christopher Tolkien, copying Rayner Unwin, dated May 31, 1979. The

The document is protected



74.	Document No. 2196 . In this March 19, 1996 letter to David Marshall
Cathleen Bl	ackburn responds to Mr. Marshall's request for legal advice as to

- . Ms. Blackburn provides her legal analysis and advice, and her recommendation as to how the matter should be handled. The document is a common interest communication designed to protect, assert and enforce the Tolkien/HC Parties' jointly-held rights vis-à-vis third parties.
- 75. <u>Document No. 2198</u>. This is a cover letter from Cathleen Blackburn to Rayner Unwin enclosing the same agenda contained in Document No. 202 (Issue No. 18), above. The matters discussed in the agenda are subjects of shared legal and commercial interest between the Estate and HarperCollins, as joint rights holders; the Estate and HarperCollins were working together to further those common interests and against third parties, including Zaentz. For the reasons discussed above, the document should not be disclosed.
- 76. <u>Document No. 2200</u>. This is a cover letter from Cathleen Blackburn to David Brawn enclosing the same agenda contained in Document No. 202 (Issue No. 18) and Document No. 2198 (Issue No. 75), above. The matters discussed in the agenda are subjects of shared legal and commercial interest between the Estate and HarperCollins, as joint rights holders; the Estate and HarperCollins were working together to further those common interests and against third parties. For the reasons discussed above, the document should not be disclosed.
- 77. <u>Document No. 2202.</u> This is a fax from David Brawn to Cathleen Blackburn dated February 11, 2003 enclosing a third party permission request. The enclosure is not part of this document and has been separately produced as PLAINTIFFS012531-33. The document also contains a handwritten notation from Ms. Blackburn reflecting her mental impressions and conclusions as to how the matter should be handled.

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. As a result the common interest privilege applies to protect the document from disclosure. 78. Document No. 2237. This is a presentation document created by HarperCollins and provided to Cathleen Blackburn in connection with a meeting
disclosure. 78. Document No. 2237. This is a presentation document created by HarperCollins and provided to Cathleen Blackburn in connection with a meeting
78. <u>Document No. 2237</u> . This is a presentation document created by HarperCollins and provided to Cathleen Blackburn in connection with a meeting
HarperCollins and provided to Cathleen Blackburn in connection with a meeting
1. 136 1.10 2004 (7)
dated March 18, 2004. The meeting – and the document prepared for the meeting –
was designed to further the common legal and commercial interests shared by and
between the Tolkien Estate and HarperCollins respecting the Tolkien Works. The
document is intended to act as an Agenda for the matters to be discussed with Ms.
Blackburn (see p. 2). Most of the document concerns matters which are wholly
irrelevant to the disputed issues in this litigation and which are not responsive to
Defendants' document requests (as narrowed by the parties' meet and confer
discussions). There is a section, however, entitled
. The document also contains Ms. Blackburn's handwritten
notes reflecting her mental impressions and conclusions on these matters. These
are all subjects of shared legal interest between the Estate and HarperCollins, and
the Estate and HarperCollins were working jointly to further those common
interests as against third parties, including Warner and Zaentz.

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79. Document No. 2315 . This is an agenda detailing matters to be
discussed between the Tolkien Estate and their attorney, Cathleen Blackburn, at an
upcoming meeting on July 16, 2007. Although the document primarily lists matters
which are wholly irrelevant to the disputed issues in this litigation and which are
not responsive to Defendants' document requests (as narrowed by the parties' meet
and confer discussions), there are several matters which relate to legal issues
concerning
. Defendants

are not entitled to discover what issue the Tolkien Parties' counsel deemed critical or important at any given time, as those decisions necessarily reflect the legal advice, mental impressions and legal conclusions of counsel. The document is plainly protected by the attorney client privilege and the attorney work product doctrine. It reflects legal matters which Ms. Blackburn intends to discuss with her clients.

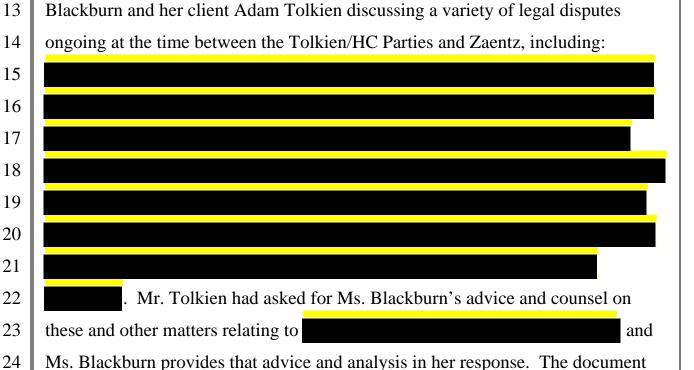
- **80.** <u>Document No. 2413</u>. This is the same document as Document No. 146 (Issue No. 11, above). For the reasons set forth above, the document is privileged.
- 81. <u>Document No. 2414</u>. This is the same agenda as Document No. 146 (Issue No. 11) and Document No. 2413 (Issue No. 80), except that it is a draft version and contains Cathleen Blackburn's handwritten notations and revisions. For the reasons set forth above, the document is privileged.
- **82.** <u>Document No. 2575</u>. This document is a chain of emails between Cathleen Blackburn and Steven Maier, U.K. outside counsel for the Tolkien Estate,

& MACHINGEN LLI	1900 Avenue of the Stars, 21st Floor	Los Angeles, California 90067-4590	
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83.

and Barry Slotnick and Seth Gelblum, of the Loeb & Loeb firm, U.S. outside
counsel for the Tolkien Estate, dated December 15 and 23, 2004. The email chain
forwards an October 22, 2004 email between these parties and Norman Rudman,
outside counsel for Zaentz (which email has previously been produced in another
form). Loeb & Loeb represented the Tolkien Estate in a variety of legal matters,
including in connection with the negotiations with Zaentz of an amendment to the
1969 Agreement concerning stage rights. This email chain concerns the stage
rights negotiations, and reflects the legal advice, mental impressions and legal
conclusions, and strategy of the Tolkien Estate's counsel in connection therewith.
The document is protected under the attorney-client privilege and the attorney work
product doctrine.

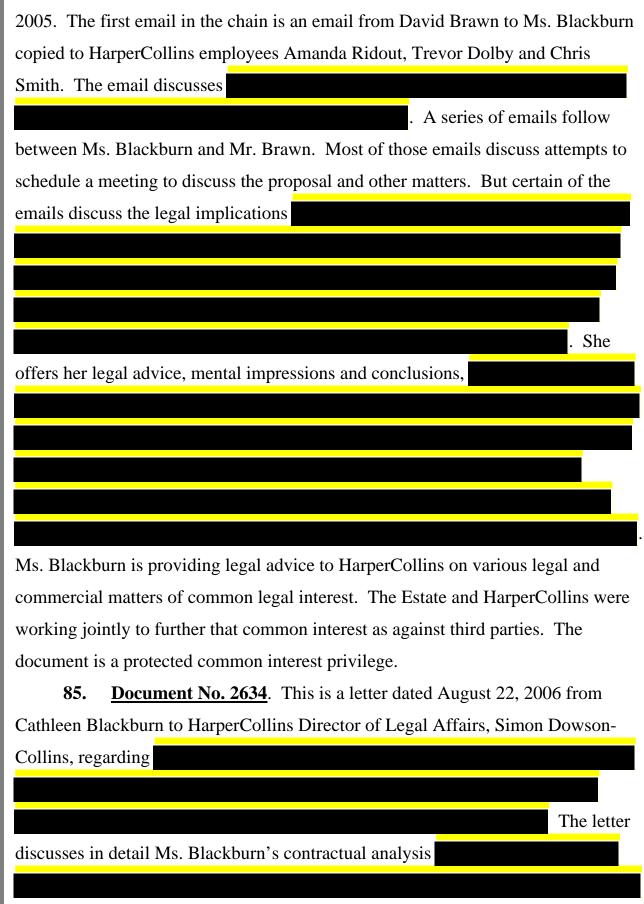
Document No. 2608. This is an email chain between Cathleen



84. <u>Document No. 2633</u>. This document consists of a chain of emails exchanged between HarperCollins and Cathleen Blackburn in late 2004 and early

plainly constitutes and attorney-client privileged communications, and reflects Ms.

Blackburn's attorney work product.



. The
letter also attaches the current draft of the stage rights amendment, which has been
produced separately. Ms. Blackburn, as counsel for the Estate, and Mr. Dowson-
Collins, as in-house counsel for HarperCollins, work together frequently to protect,
assert and enforce the Tolkien/HC Parties' jointly held rights as against third
parties, including Zaentz. This document is protected by the common interest
privilege that attaches to such communications.
86. Document No. 2696 . This is a letter from Cathleen Blackburn to

Mary Butler at HarperCollins dated June 29, 1994. The letter discusses

. This letter is a confidential communication between Ms. Blackburn and Ms. Butler on the subject, discussing Ms. Blackburn's legal analysis, mental impressions and legal conclusions concerning these issues. The document is a confidential

87. <u>Document No. 2710</u>. This document was withheld in error and will be produced. The court should note that the bottom email in the chain was produced in a different form (as PLAINTIFFS030199-200), but the full email chain was inadvertently not produced. We note that Warner did not produce their copy of this email chain from their own files; we assume Warner believed the document to be non-responsive.

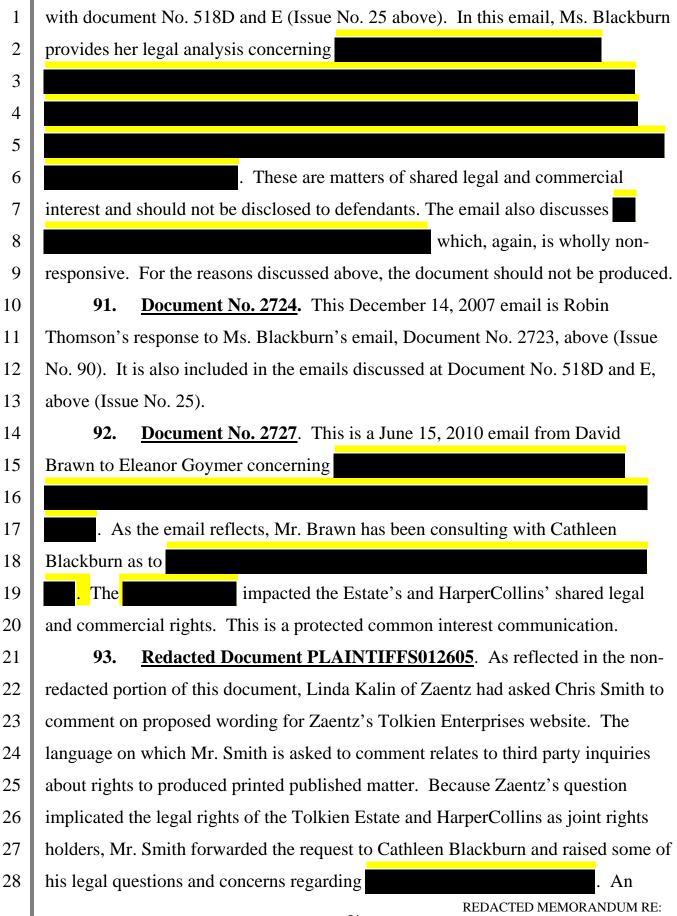
communication between joint rights holders concerning subjects of shared legal and

commercial interest.

88. <u>I</u>	Document No. 2720 . This document consists of the following: (1) an
email from To	olkien Estate attorney Piers Clayden to HarperCollins' in house
counsel Thom	nas Jarvis, cc: Cathleen Blackburn, and David Brawn and Chris Smith
of HarperColl	ins, forwarding (2) a letter from Piers Clayden to Thomas Jarvis
discussing	
	. Ms. Blackburn and her colleagues at
Manches, and	in house counsel for HarperCollins, often work together frequently to
protect, assert	and enforce the Tolkien/HC Parties' jointly held rights as against
third parties.	The document concerns a subject of shared legal and commercial
interest betwe	een the Estate and HarperCollins, who were working together to
protect and as	sert those commonly held interests.

- HarperCollins in house attorney David Daley to various HarperCollins employees:
 Robin Thomson and Jim Holden (both worked in royalties); Simon Dowson-Collins, Director of Legal Affairs; Ed Kielbasiewicz (HarperCollins' Finance Director and Company Secretary); David Brawn (publishing); Lucy Vanderbilt (Group Rights Director) and Gloria Adams (former assistant for Legal Affairs at HarperCollins). The email attaches the stage rights amendment to the 1969 Agreements, although that agreement is not included in this document.

 A fortiori, it is an attorney-client communication and should not be produced.
- **90.** <u>Document No. 2723</u>. This email dated October 11, 2007 from Cathleen Blackburn (through her assistant Nicola Peedell) to Robin Thomson and David Brawn at HarperCollins is among the emails discussed above in connection



	1	exchange between Mr. Smith and Ms. Blackburn follows. In responding to Mr.
	2	Smith, Ms. Blackburn advises
	3	
	4	The emails between Mr. Smith and Ms. Blackburn have properly been redacted, as
	5	they were prepared and exchanged for the purpose of giving or obtaining legal
	6	advice in order to protect, assert and enforce the Tolkien/HC Parties' shared legal
	7	and commercial interests as against third parties.
	8	94. Redacted Document PLAINTIFFS013723. The redacted portion of
	9	this document contains an email discussion between HarperCollins' Chris Smith
	10	and Cathleen Blackburn concerning
	11	. Ms. Blackburn and Mr.
	12	Smith discuss
	13	. Mr. Smith and Ms.
	14	Blackburn are communicating confidentially about shared legal and commercial
	15	matters that impact the Tolkien/HC Parties. Defendants are not entitled to learn
)	16	what matters of common interest were being discussed between the Estate and
	17	HarperCollins at any given time. The document is a protected common interest
	18	communication.
	19	95. Redacted Document PLAINTIFFS013754. The non-redacted
	20	portion of this document consists of an email chain between Chris Smith, Cathleen
	21	Blackburn, David Brawn and a representative of third party Prima Games asking
	22	for approval for the cover of Prima's Two Towers strategy guide. The last email in
	23	the chain, between Chris Smith and Cathleen Blackburn, has been redacted. In this
	24	redacted email, Ms. Blackburn provides legal advice to Mr. Smith in order to
	25	protect and assert the Tolkien/HC Parties' jointly held rights as against third party
	26	Prima Games. Ms. Blackburn advises Mr. Smith
	27	
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1	This is a common interest communication reflecting Ms. Blackburn's
2	legal advice, mental impressions and legal conclusions. Ms. Blackburn and Mr.
3	Smith were working together in furtherance of those commonly held legal rights.
4	The document was properly redacted.
5	96. Redacted Document PLAINTIFFS039736. The redacted portion of
6	this document is an email exchange between Cathleen Blackburn, and David Brawn
7	and Paula Johnson at HarperCollins. They are discussing
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9	. Mr. Brawn
10	seeks Ms. Blackburn's legal advice as to whether
11	
12	. In response, Ms. Blackburn provides her
13	legal analysis as to both the copyright issues and the underlying contractual scheme
14	between the Tolkien/HC Parties and Zaentz as to who owns what rights. Ms.
15	Blackburn and Mr. Brawn are communicating confidentially concerning matters
16	which affect the Tolkien/HC Parties' shared legal and commercial rights,
17	
18	in order to protect and assert these joint rights. The
19	redacted portions are protected common interest communications, and should not
20	be produced.
21	97. Redacted Document PLAINTIFFS043480. The following text has
22	been redacted from this email chain between Cathleen Blackburn and David Brawn:
23	
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26	This redacted text reflects
27	a legal matter of common interest that Ms. Blackburn intends to discuss with
28	HarperCollins at the upcoming meeting referenced in the email chain. The subject
	REDACTED MEMORANDUM RE:

MACHIINGER LLP	venue of the Stars, 21st Floor	geles, California 90067-4590	

HarperCollins, and Ms. Butler and Mr. Williamson were working jointly to further those common legal interests as against Zaentz.

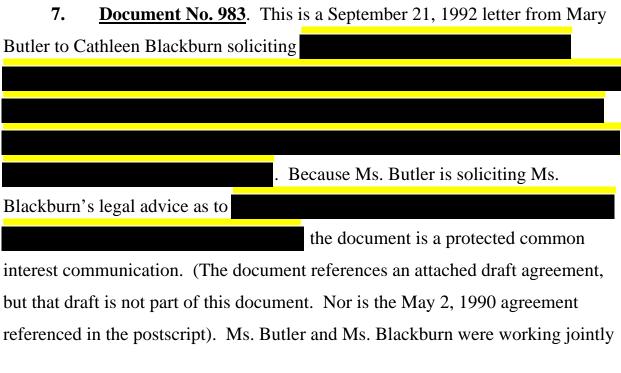
II. ISSUE NO. 4

- 1. <u>Document No. 135</u>: This is a December 17, 1991 letter from Dick Williamson to Mary Butler, in which Mr. Williamson communicates his legal position

 The communication was made in furtherance of the Estate's and HarperCollins' joint efforts to protect and enforce their commonly held legal and commercial rights vis-à-vis a third party.
- 2. <u>Document No. 255</u>. This document is another copy of the HarperCollins presentation discussed above at Issue No. 78 (Document No. 2237). This copy does not contain Ms. Blackburn's handwritten notes. For the reasons set forth above, the document is protected from disclosure by the Tolkien/HC Parties' common interest in protecting, enforcing and asserting their jointly held rights.
- Blackburn and Adrian Laing, on behalf of their respective clients the Tolkien Estate and HarperCollins, worked closely together in protecting and enforcing the Tolkien-related rights their clients share, including with respect to various legal disputes and rights-related and discussions with third parties such as Zaentz. This particular document was sent by Cathleen Blackburn to Adrian Laing one day after the Tolkien/HC Parties received a May 16, 1996 letter from Zaentz's outside counsel, Mal Burnstein, in which Mr. Burnstein took the position that Zaentz, not HarperCollins, should have the right to license any computer game that used graphics, rather than words or text, as its primary tool. In her letter, Ms. Blackburn shares her legal analysis, mental impressions and legal conclusions regarding

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2	. Ms. Blackburn copies David Brawn
3	at HarperCollins, but that does not destroy the common interest privilege that
4	attaches to this document. The document concerns a subject of shared legal interest
5	between the Estate and HarperCollins, who were working jointly to protect and
6	assert their common legal interest as against Zaentz. The matter of common
7	interest is at the heart of the current litigation, and reveals
8	. This document
9	should not be produced.
10	4. <u>Document No. 883</u> . This is a letter from Cathleen Blackburn to Mary
11	Butler dated October 15, 1993. The letter addresses various specific instances in
12	which the Tolkien Estate and HarperCollins were working together to protect and
13	enforce their jointly held rights vis-à-vis third parties, including among
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17	. The
18	document references an attached draft letter prepared by Ms. Blackburn concerning
19	but that draft is not included in this particular
20	document. The document is a common interest communication sent in furtherance
21	of the Tolkien/HC Parties' joint efforts to protect and enforce their shared legal and
22	commercial rights vis-à-vis third parties.
23	5. Document No. 894 . This document is a January 14, 1993 letter from
24	Cathleen Blackburn to Mary Butler, passing on her and Dick Williamson's legal
25	advice concerning
26	Ms. Blackburn's letter reflects Mr. Williamson's assessment
27	of
28	. The letter

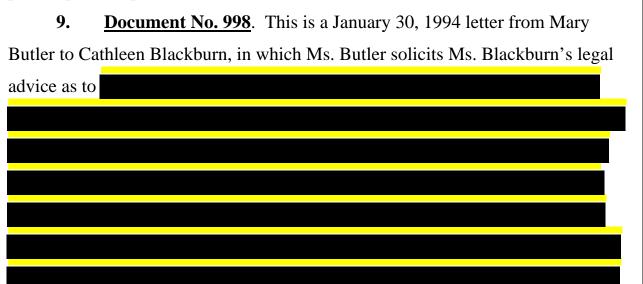
was sent in furtherance of the Tolkien/HC Parties' efforts to protect and assert their
jointly held rights vis-à-vis third party Zaentz. The letter reflects the legal advice,
mental impressions and conclusions of counsel on matters of common interest.
Document No. 962 . This is a typewritten memorandum prepared by
Mary Butler to David Young detailing her May 12, 1994 telephone conversation
with Cathleen Blackburn, in which she and Ms. Blackburn discussed
. There is also an
agenda detailing issues Ms. Butler intends to discuss with Ms. Blackburn, including
The memorandum discusses communications between Ms. Butler and Ms.
Blackburn in furtherance of the Tolkien/HC Parties' efforts to protect, assert and
enforce their jointly held rights vis-à-vis third party Zaentz. It reflects the legal
advice, mental impressions and conclusions of counsel, and is a protected common
interest communication.
7. Document No. 983 . This is a September 21, 1992 letter from Mary



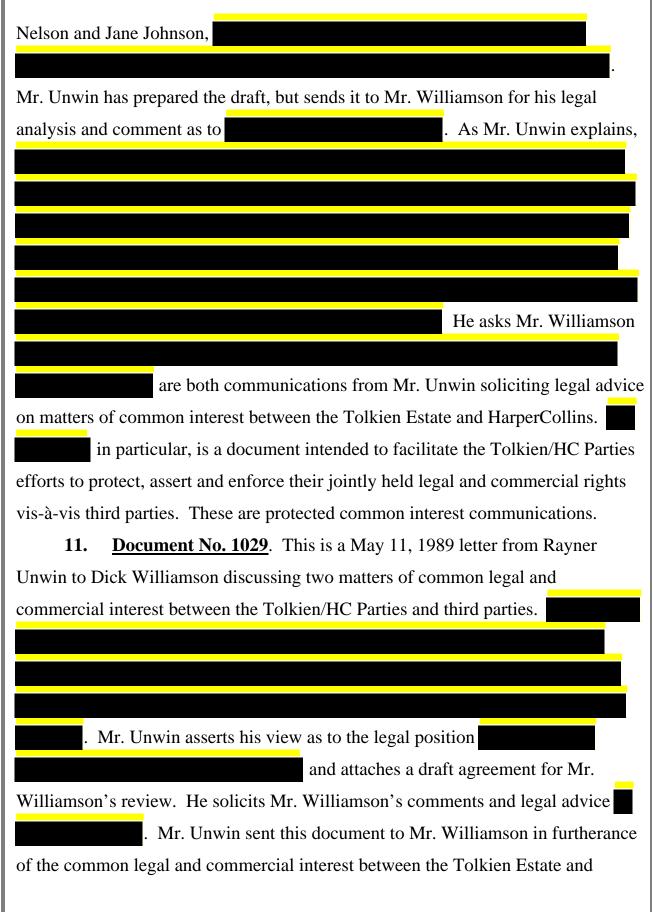
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to further th	e Tolkien/HC Parties'	shared legal and commercial interests as against
third parties		
8.	Document No. 997.	In this August 18, 1994 letter from Mary Butler

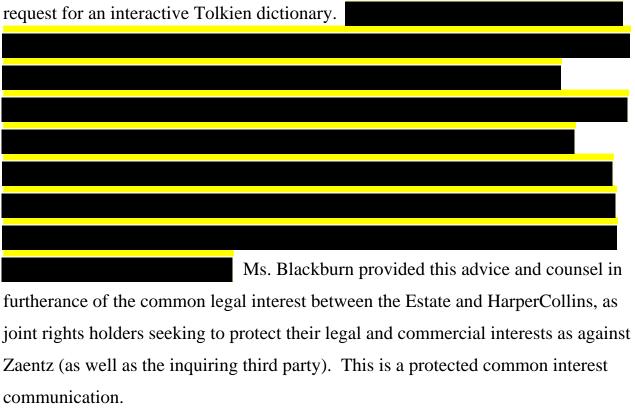
to Cathleen Blackburn, Ms. Butler responds to Ms. Blackburn's question as to
. The communication was made in furtherance of the Tolkien/HC
Parties' joint efforts to protect, assert and enforce their shared legal and commercial
rights and is
thus protected as a common interest communication. (The note referenced in the
postscript is not part of this document).

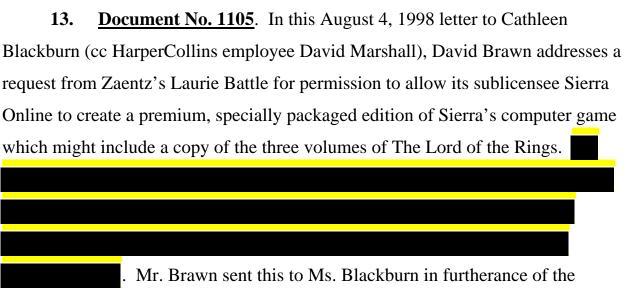


- . The communication was made in furtherance of the Tolkien/HC Parties' efforts to protect, assert and enforce their jointly held rights as against third party Zaentz in connection with a legal dispute between them, and is thus protected as a common interest communication.
- **10.** <u>Document No. 1017</u>. This is a letter from Rayner Unwin to Dick Williamson, cc: HarperCollins' employees Robin Hyman, Mary Butler, Marjorie



HarperCollins, as joint rights holders in and to the Tolkien Works. The document
is protected from discovery.
12. <u>Document No. 1092</u> . This document is an October 15, 1997 letter
from Cathleen Blackburn to David Brawn, discussing a third party permission





common legal and commercial interest between the Tolkien Estate and

HarperCollins, to protect a	and assert their jointly held rights vis-à-vis third parties
Zaentz and Sierra Online.	The document is thus protected from discovery.

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14.	Document No. 1110.	This is a July 31, 1997 fax from	Cathleen
Blackburn to	David Brawn addressi	ng three matters of common leg	al and
commercial	interest between the Tol	lkien Estate and HarperCollins.	Two of the
matters conc	ern works other than Th	ne Lord of the Rings and The Ho	obbit, and are
thus wholly i	irrelevant to the issues p	presented in this litigation: (1) a	third party
request for th	ne film rights in Tolkier	a's <i>Roverandum</i> (a matter wholl	y irrelevant to
the issues pro	esented in this litigation	a); and (2) audio books of Sir Go	awain and the
Green Knigh	nt, Pearl and Sir Orfeo.	The third common interest issu	e relates to

In this document, Ms. Blackburn provides her legal advice, mental impressions and legal conclusions on these matters. She also advises Mr.

Brawn

Ms. Blackburn sent this letter to Mr. Brawn to further the common legal and commercial interest between the Tolkien Estate and HarperCollins, and to protect and assert their jointly held rights vis-à-vis third parties. The document is thus protected from discovery.

Document No. 1114. This is a letter from Cathleen Blackburn to **15.** David Marshall, cc David Brawn and Duncan Carson – all HarperCollins employees – reflecting her legal advice and analysis of

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. The letter is sent to
further the Tolkien/HC Parties' common legal and commercial interest vis-à-vis
third parties, and to protect and enforce those jointly held rights. The document is a
protected common interest communication.

16. Document No. 1278. This is an agenda prepared by Mary Butler in anticipation of an upcoming June 15, 1992 meeting between HarperCollins and the Tolkien Estate and its outside counsel. Ms. Butler forwards the agenda to Manches attorneys Dick Williamson, Cathleen Blackburn and Nigel Rootes, as well as internally within HarperCollins to Rayner Unwin, Jonathan Lloyd and Mike Cheyne. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are a few matters which relate to legal issues concerning

. Given that each of these

topics necessarily involves legal issues to be discussed between the Tolkien Parties and their counsel, and HarperCollins as joint rights holders seeking to protect and enforce their common legal and commercial interests vis-à-vis third parties, the document is protected from disclosure.

17. Document No. 1287. These are typewritten draft notes prepared by Dick Williamson of a meeting he had with HarperCollins representatives, including Mary Butler, Rayner Unwin and in house HarperCollins attorney Patrick Swaffer, on March 27, 1991. [After the Tolkien/HC Parties' filed their Confidential In Camera Brief, they learned that Mr. Swaffer was former outside counsel for

HarperCollins.] The document contains Ms. Butler's handwritten revisions to the
draft notes, which she communicated to Dick Williamson in an April 5, 1991
telephone conversation. Although the document primarily lists matters which are
wholly irrelevant to the disputed issues in this litigation and which are not
responsive to Defendants' document requests (as narrowed by the parties' meet and
confer discussions), the document reflects several common legal and commercial
issues which were the subject of discussion at the meeting, including
. Given that each of these
topics necessarily involves legal issues to be discussed between the Tolkien Parties
and their counsel, and HarperCollins as joint rights holders seeking to protect and
enforce their common legal and commercial interests vis-à-vis third parties, the
document is protected from disclosure. Defendants are not entitled to discover
what legal issues the Estate and HarperCollins were discussing in furtherance of
their jointly held rights.
18. Document No. 1326 . This agenda for an upcoming September 28,
18. <u>Document No. 1326</u> . This agenda for an upcoming September 28, 1994 meeting is the same as Document No. 59 (Issue No. 7, Section I above);
1994 meeting is the same as Document No. 59 (Issue No. 7, Section I above);
1994 meeting is the same as Document No. 59 (Issue No. 7, Section I above); however, this document also includes handwritten notes which we believe were
1994 meeting is the same as Document No. 59 (Issue No. 7, Section I above); however, this document also includes handwritten notes which we believe were prepared by Mary Butler at the meeting, memorializing the discussion about
1994 meeting is the same as Document No. 59 (Issue No. 7, Section I above); however, this document also includes handwritten notes which we believe were prepared by Mary Butler at the meeting, memorializing the discussion about various common interest matters. For the reasons set forth above, the document is

Adrian Laing. Ms. Blackburn discusses

involves legal issues to be discussed between the Tolkien Parties and their counsel,

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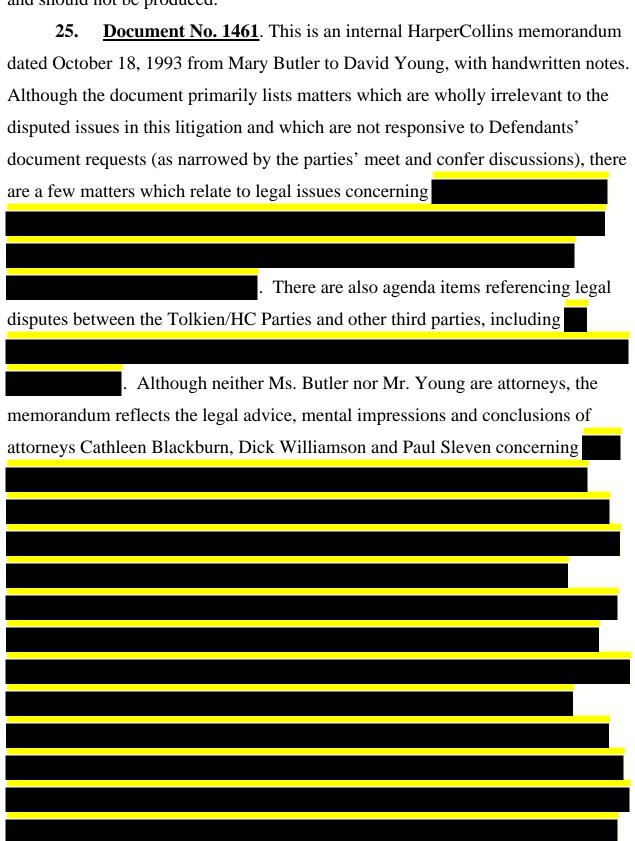
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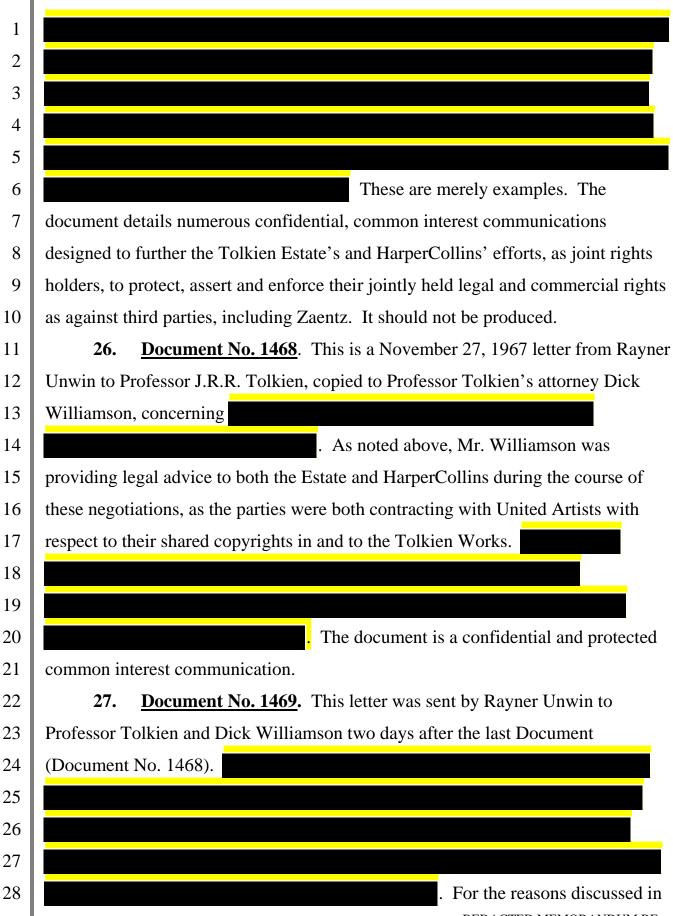
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and HarperCollins as joint rights holders seeking to protect and enforce their
common legal and commercial interests vis-à-vis third parties, the document is
protected from disclosure.

- 21. **Document No. 1428**. This copy of the December 1998 Tolkien Permissions Guidelines is the same as Document No. 99 (Issue No. 9, Section I above), except that it does not have Cathleen Blackburn's handwritten notations. For the reasons discussed above, the document should not be produced.
- 22. **Document No. 1429.** In this March 25, 1996 letter to David Brawn, Cathleen Blackburn discusses the permissions guidelines she has prepared. She encloses copies for Mr. Brawn, HarperCollins' in house counsel David Daley, and others at HarperCollins (David Marshall and Jane Johnson). The enclosure is not attached to this document, but is discussed below under Issue No. 23, Document No. 1430. For the reasons discussed above, Ms. Blackburn prepared the Permissions Guidelines to provide legal guidance to both the Tolkien and the HC Parties, as joint owners of rights in and to the Tolkien Works, in administering their jointly-held rights in the Tolkien Works (and other Tolkien-related works not at issue in this litigation), including
- The document is a confidential common interest communication.
- 23. **Document No. 1430**. This document is the March 1996 Tolkien Permission Guidelines attached to Ms. Blackburn's March 25, 1996 letter (Document No. 1429, Issue No. 22, Section II above). For the reasons discussed above, the document is a confidential common interest communication and should not be produced.
- 24. **Document No. 1431**. This document is the July 1996 version of the Tolkien Permissions Guidelines prepared by Cathleen Blackburn. For the reasons

discussed above, the document is a confidential common interest communication and should not be produced.





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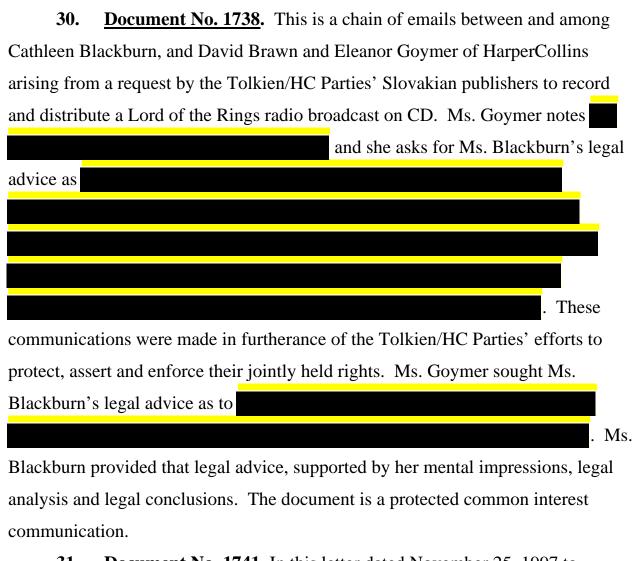
Section II Issue No. 26 (Document 1468), this document is a confidential and protected common interest communication.

28. **Document No. 1545.** This document was prepared by Mary Butler to memorialize the discussions at a meeting between various HarperCollins employees (Rayner Unwin, Robin Hyman, Mark Streatfeild, Elizabeth Sich and Jane Johnson). Although none of these people are attorneys, the discussion at the meeting, and thus the minutes, reflect communications between HarperCollins and Dick Williamson concerning various matters, most of which are non-responsive and irrelevant to the issues presented in this litigation. There are some notes, however, concerning what Mr. Williamson told Rayner Unwin (RSU) about

. These are subjects of shared legal interest between the Estate and HarperCollins, vis-a- vis third parties, and the HarperCollins employees were meeting to communicate internally about these confidential common interest discussions with Mr. Williamson.

29. **Document No. 1551.** This document is an agenda prepared by Mary Butler outlining matters to be discussed at an upcoming Tolkien Committee Meeting. The document was sent to various HarperCollins employees and Dick Williamson. Although the document primarily lists matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), there are several matters which relate to legal issues concerning Each of these identified categories relates to

subjects of shared legal interest between the Estate and HarperCollins, vis-a- vis
third parties, and the Tolkien/HC Parties were meeting to discuss these issues and
to formulate positions and responsive action items in order to protect and enforce
their jointly-held rights. Defendants are not entitled to discover what particular
legal issues the Tolkien/HC Parties were discussing at any given time. The
document is a protected common interest communication.



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- document should not be produced.
- Cathleen Blackburn responds to Mr. Brawn's request for legal advice as to She provides her legal analysis, mental impressions and legal conclusions as to

Document No. 2031. In this June 8, 1995 letter to David Brawn,

- . This is a communication in furtherance of the Tolkien/HC Parties' common legal and commercial interest in connection with the Tolkien Works, and should not be disclosed.
- 34. **Document No. 2104.** Professor Tolkien sent this December 2, 1968 letter to the team involved in advising him on the negotiations of the 1969 Agreements between the Estate, HarperCollins' predecessor George Allen & Unwin, and defendants' predecessor United Artists – agent H.N. Swanson, attorney Dick Williamson, and publisher Rayner Unwin. The

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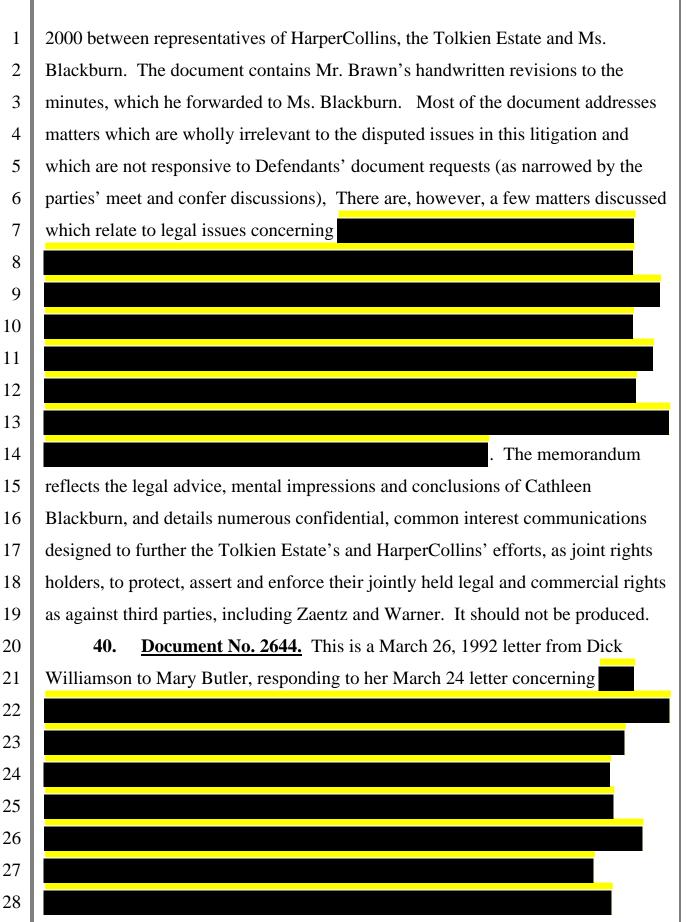
35. **Document No. 2108**. This is a January 27, 1969 letter from attorney Dick Williamson to his client, Professor Tolkien. In the letter, Mr. Williamson discusses various legal and confidential financial issues concerning Professor Tolkien. Among other things, Mr. Williamson discusses

The document is protected from discovery under the attorney-client privilege and the attorney work product doctrine.

36. **Document No. 2122.** This is a series of emails between Peter Sherrott at HarperCollins and Cathleen Blackburn arising from a request by the Tolkien/HC Parties' U.S. publisher Houghton Mifflin to use an extract of text from the Tolkien Works digitally on fixed media. Because Mr. Sherrott he asks Ms. Blackburn for her legal advice as to Ms. Blackburn responds, first with some questions, then with her legal analysis and

recommendation as to how the parties should proceed to protect and assert their jointly held legal and commercial rights. The document is a common interest communication and should not be produced.

- **37. Document No. 2124.** This document is a portion of the email chain discussed as Document No. 2122, Issue No. 36, Section II above. For the reasons discussed above, the document should not be produced.
- 38. **Document No. 2217**. This document is a portion of the email chain discussed above as Document No. 1738, Issue No. 30, Section II above. For the reasons discussed above, it should not be produced.
- **39. Document No. 2305.** This document is a memorandum prepared by Cathleen Blackburn reflecting the draft minutes of a meeting held on February 11,



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communication and should not be produced.

Mr. Williamson's letter was sent in response to Ms. Butler's request for legal			
advice, and in furtherance of the Tolkien/HC Parties' joint efforts to assert, protect			
and enforce their shared rights in and to the Tolkien Works, vis-à-vis third parties			
. The document is a			
common interest communication which should not be produced.			

David Brawn and various HarperCollins executives (Clive Malcher, Chris Smith,

Document No. 2698. This is an April 19-20 email chain between

Kate Fitzpatrick and Chris Michaels). Mr. Brawn email states on its face that he is reporting back internally within HarperCollins about his communications with "the Tolkien Estate's lawyer," meaning Cathleen Blackburn, concerning . Mr. Brawn and Ms. Blackburn were working together to formulate a joint policy and procedure with respect to this potential third party use, in order to protect and assert the shared legal and commercial rights of the Tolkien Estate and HarperCollins. Mr. Brawn quotes Ms. Blackburn's legal advice and analysis. The document reflects a confidential common interest

42. **Document No. 2718**. This is an August 13, 2002 email from Manches attorney Edward Humphries to David Brawn, cc Cathleen Blackburn and HarperCollins' employee Barry Clark, attaching notes memorializing a meeting between these individuals in June, 2002. Much of the document addresses matters which are wholly irrelevant to the disputed issues in this litigation and which are not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions). There are, however, a few matters discussed which relate to legal issues concerning

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	The discussion contained in this section of the notes
reflects and reveals the Tol	kien/HC Parties' legal strategy as well as the mental
impressions and conclusion	ns, and legal advice of counsel acting on the Tolkien/HC
Parties' behalves There is	also a discussion of

The memorandum reflects the legal advice, mental impressions and conclusions and legal strategies of counsel and details numerous confidential, common interest communications designed to further the Tolkien Estate's and HarperCollins' efforts, as joint rights holders, to protect, assert and enforce their jointly held legal and commercial rights as against third parties, including Zaentz and Warner. The document should not be produced.

- 44. **Document No. 2725.** This is more of the email chain discussed above at Section I Issue 90 (Document 2723) and Document No. 518D and E (Section I, Issue No. 25). For the reasons discussed above, the document should not be produced.
- **45.** Redacted Document PLAINTIFFS014153-54. The redacted portion of this document is an email from David Brawn to Cathleen forwarding an (unredacted) email chain between Mr. Brawn and New Line's David Imhoff, in advance of a discussion Mr. Brawn is scheduled to have with Ms. Blackburn as to how to respond. As the unredacted portion of the document reflects, the Tolkien/HC Parties raised a legal dispute with New Line concerning role playing game books issued by New Line's third party licensee Decipher. The Tolkien/HC Parties contended that this form of merchandising fell within their reserved rights. He raises other scope of rights issues as to whether quotations have appropriately been used by this sub-licensee. Mr. Imhoff, on behalf of New Line, essentially blames Zaentz/Tolkien Enterprises. He notes that the dispute "appears to be a legal difference of opinion beyond New Line and Harper Collins' scope." He suggests

that the Tolkien/HC Parties raise the dispute with Zaentz. The redacted portion of
the document is between Mr. Brawn and Ms. Blackburn alone, and discusses the
Tolkien/HC Parties' joint legal position concerning this dispute between the
Tolkien/HC Parties, and Mr. Brawn is soliciting Ms. Blackburn's legal advice as to
how to proceed. Mr. Brawn and Ms. Blackburn are acting in concert to protect,
assert and enforce the Tolkien/HC Parties' jointly held rights as against Zaentz,
New Line and Decipher. The redacted email is a protected common interest
communication.
46. Redacted Document PLAINTIFFS014286. The redacted portion of
this document is an email from HarperCollins' David Marshall to Cathleen
Blackburn, discussing the forwarded (unredacted) email from Paul Butterfield of
third party Monolith Productions; the redacted portion also contains Ms.
Blackburn's handwritten notations. Third party Monolith Productions had inquired
as to who owned what rights with respect to computer games based on the Tolkien
Works. Mr. Marshall forwards the email to Ms. Blackburn to solicit her legal
advice as to
to protect and assert their rights vis-à-vis this third
party request. Mr. Marshall also asks for Ms. Blackburn's legal advice concerning
. Mr. Marshall and Ms. Blackburn are acting in concert to
protect, assert and enforce the Tolkien/HC Parties' jointly held rights as against
third parties. The redacted email and accompanying handwritten notes reflecting
Ms. Blackburn's mental impressions and legal conclusions are protected by the
common interest privilege.

47. REDACTED DOCUMENT PLAINTIFFS019665-66. The redacted portion of this document is an email from Cathleen Blackburn to David Brawn (and

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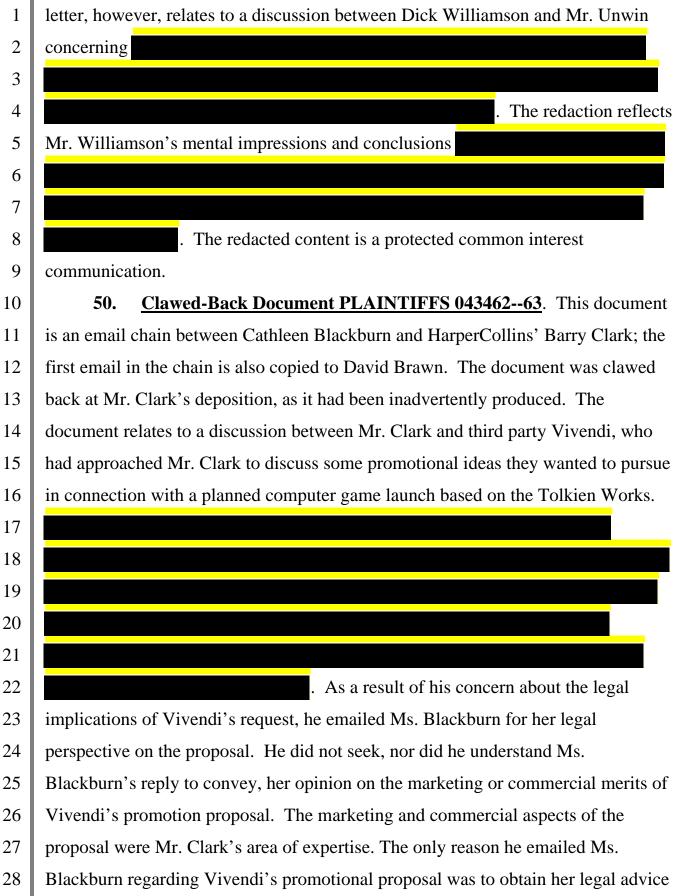
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a forwarding email to Cathleen Blackburn from her assistant, Nicola Peedell, cc
another Manches legal assistant Leslie Dancy), discussing a request from third
party Pearson Learning Solutions for digital rights to use text from The Lord of the
Rings. The first redacted email is between Ms. Blackburn and her legal assistants;
those are clearly privileged and should not be produced. In the second redacted
email, Ms. Blackburn provides Mr. Brawn with her legal analysis as to

. Ms. Blackburn and Mr. Brawn are acting in concert to protect, assert and enforce the Tolkien/HC Parties' jointly held rights as against this third party. The redacted email is a protected common interest communication.

- 48. Redacted Document PLAINTIFFSO37209-210. The redacted portion of this document is a handwritten post it note prepared by HarperCollins inhouse attorney Karly Last during the course of the document collection process in this litigation. It reflects the file location of this document, and was placed on the document to facilitate return of the document to its proper location once the document was scanned for production. Due to a clerical error, the post it note was not removed before the document was scanned. The note was thus redacted as it was wholly irrelevant and non-responsive and not part of this document, and was prepared by counsel during the course of this litigation. Additionally, a clean and unredacted version of the document was previously produced as PLAINTIFFS037211-37257.
- **Redacted Document PLAINTIFFS037403**. This is a letter from 49. Rayner Unwin to Christopher Tolkien dated December 7, 1983. Most of the redacted content concerns matters which relate to works that are not at issue in this litigation (The History of Middle-earth" and "The Book of Lost Tales II."); it is thus wholly irrelevant to the disputed issues in this litigation and not responsive to Defendants' document requests (as narrowed by the parties' meet and confer discussions), and was properly redacted on that basis. The first paragraph of the



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